

Securities Compliance (SC)

Government Securities Act

Version 1.0, January 2015



Office of the
Comptroller of the Currency

Washington, DC 20219

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Introduction

The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Government Securities Act," is prepared for use by OCC examiners in connection with their examination and supervision of national banks and federal savings associations (collectively, banks). Each bank is different and may present specific issues. Accordingly, examiners should apply the guidance in this booklet consistent with each bank's individual circumstances. When it is necessary to distinguish between them, national banks and federal savings associations (FSA) are referred to separately.

The "Government Securities Act" booklet provides guidance to OCC examiners for evaluating compliance with the Government Securities Act of 1986 (GSA). This booklet also provides guidance to OCC examiners for evaluating compliance with the applicable sections of the record-keeping and confirmation requirements of 12 CFR 12 (for national banks) and 12 CFR 151 (for FSAs) and the government securities sales practices (suitability requirements) of 12 CFR 13.

Certain provisions of the GSA and the companion regulations apply to national banks and FSAs, including those with limited government securities activities (non-dealer banks), which are exempt from filing a notice as a government securities dealer with the OCC. In particular, non-dealer banks are subject to certain provisions related to hold-in-custody repurchase agreements, due bills, large position reporting, custodial holdings of government securities, and record-keeping requirements. Throughout this booklet, reference is made to the applicability of the various rules and regulations to dealer banks and non-dealer banks. In addition, this booklet contains separate examination procedures for dealer banks and non-dealer banks.

Under section 15C(d)(1) of the Securities Exchange Act of 1934 (Exchange Act), 15 USC 78o-5(d)(1), all records of a bank that operates as a government securities broker or dealer are subject to reasonable periodic, special, or other examinations by the OCC. When the OCC examines government securities dealers, its policy is to use the same specifications on scope and frequency that it does for municipal securities dealers. Under the Municipal Securities Rulemaking Board rules, an examination of municipal securities dealers must take place every two calendar years. Such a policy is efficient because most government securities dealers are also municipal securities dealers. GSA compliance examinations for non-dealer banks should occur during the course of the bank's supervisory cycle.

An overview of the risks associated with government securities trading activities (e.g., price risk, credit risk, and liquidity risk) is included in the "Financial Derivatives and Trading Activities" booklet of the *Comptroller's Handbook*.¹ In addition, the "Municipal Securities Rulemaking Board Rules" booklet of the *Comptroller's Handbook* provides supervisory guidance for banks that operate as municipal securities dealers.

¹ The "Financial Derivatives and Trading Activities" booklet, which revises and supersedes the "Risk Management of Financial Derivatives" booklet, has not been issued as of the publication date of this booklet.

Legal Framework

After a succession of highly publicized failures of government securities broker and dealers in the mid-1970s to the mid-1980s, Congress exercised its authority over the largely unregulated government securities market through the passage of the GSA, 15 USC 78o-5. The GSA directed the Secretary of the Treasury to write rules to regulate government securities brokers and dealers. These rules are divided into the following areas:

- Rules of general application (17 CFR 400)
- Financial responsibility (17 CFR 402)
- Protection of customer securities and balances (17 CFR 403)
- Records to be made and preserved (17 CFR 404)
- Reports and audits (17 CFR 405)
- Large position reporting (17 CFR 420)
- Custodial holdings (17 CFR 450)

The GSA's rules of general application require banks to provide notice to the OCC of their status as registered government securities dealers; banks, however, are exempt from the GSA's financial responsibility requirements because they are subject to the OCC's capital requirements. In addition, banks are exempt from the GSA's reporting and auditing requirements because banks are subject to the OCC's reporting and auditing rules. The GSA's investor protection rule regulates repurchase agreement transactions and establishes safeguards over customer-owned securities. The GSA's large position reporting rule establishes record-keeping and reporting requirements for entities that control large positions in certain U.S. Treasury securities. The GSA's custodial holdings rule applies to banks that hold government securities for customers in a custodial capacity.

U.S. Securities and Exchange Commission (SEC) Rule 15 USC 78c(a)(42) defines "government securities" as follows:

- (A) securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States;
- (B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors;
- (C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the Commission (U.S. Securities and Exchange Commission);
- (D) for purposes of sections 78o-5 and 78q-1 of this title, any put, call, straddle, option, or privilege on a security described in subparagraph (A), (B), or (C) other than a put, call, straddle, option, or privilege—
 - (i) that is traded on one or more national securities exchanges; or
 - (ii) for which quotations are disseminated through an automated quotation system operated by a registered securities association; or

(E) for purposes of sections 78o, 78o-5, and 78q-1 of this title as applied to a bank, a qualified Canadian government obligation as defined in section 24 of title 12.

What Are ‘Dealers’ and ‘Government Securities Dealers’ Under the Federal Securities Laws?

Section 3(a)(5) of the Exchange Act generally defines a dealer as any person engaged in the business of buying and selling securities for his or her own account, through a broker or otherwise. The definition provides, however, that a bank engaging in buying and selling government securities is not considered a dealer under the general definition because government securities are exempted securities.

Section 3(a)(44) of the Exchange Act defines a government securities dealer as “any person engaged in the business of buying and selling government securities for his (or her) own account, through a broker or otherwise.” The term “government securities dealer” does not include

- any person insofar as he (or she) buys or sells such securities for his (or her) own account, either individually or in some fiduciary capacity, but not as a part of a regular business.
- a bank, unless the bank is engaged in the business of buying and selling government securities for its own account other than in a fiduciary capacity, through a broker or otherwise.

On November 7, 2007, the SEC’s Division of Trading and Markets issued the “Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules” (Staff Compliance Guide). According to the Staff Compliance Guide, typical dealer functions include

- providing two-sided quotations or otherwise indicating an ongoing willingness to buy and sell particular securities.
- issuing or originating securities that the person also buys and sells.

The Staff Compliance Guide further states that the following questions can help determine whether a particular bank is acting as a dealer:

- Does the bank hold itself out as being in the business of buying and selling securities?
- Does the bank engage in transactions with the public?
- Does the bank make a market in, or quote prices for both purchases and sales of, one or more securities?
- Does the bank participate as principal in a “selling group” or otherwise underwrite securities?
- Does the bank hold a dealer inventory or does it trade with an affiliate that is a dealer?

A “yes” answer to any of these questions indicates that the bank may be a dealer under the federal securities laws. Examiners requiring legal guidance on what constitutes a potential dealer activity should contact the OCC’s Securities & Corporate Practices Division.

De Minimis Exception

SEC Exchange Act Rule 3a5-1 exempts a bank from dealer registration if the bank engages in or effects no more than 500 riskless principal transactions during the course of a calendar year. This exemption must be read together with section 3(a)(4)(B)(xi) of the Exchange Act, which provides an exemption from registration as a broker if a bank effects no more than 500 securities transactions in a given calendar year (that do not meet any of the additional exceptions to broker registration laid out in section 3(a)(4)(B)). Under Rule 3a5-1, the exemption from registration as a dealer only applies if the riskless principal transactions allowed under Rule 3a5-1 and the securities brokerage transactions allowed under section 3(a)(4)(B)(xi) number no more than 500 in a calendar year when combined.² If the bank relies on the de minimis exception it must maintain adequate records to demonstrate compliance with the requirements of the exception.

General Types of Trading Activities

Banks may be involved in three general types of trading activities:

- The bank buys or sells securities on behalf of a customer. These are agency transactions in which the agent (bank) assumes no substantial risk and is compensated by a prearranged commission or fee.
- As a dealer, the bank buys and sells securities for its own account. These are termed principal transactions because the bank is acting as a principal, buying or selling securities through its own inventory and absorbing whatever market gain or loss is made on the transaction.
- The bank executes a contemporaneous, “riskless” principal trade. The bank typically buys and sells the securities as a principal, with the purchase and sale originating almost simultaneously. Exposure to market risks is limited by the brief period of actual ownership. For a bank dealer, for example, any resulting profits are generated from the dealer-initiated markup, which is the difference between the purchase and sale prices.

In the primary market, government securities are sold in auctions. Bids are divided into competitive and noncompetitive bids. Competitive bids are restricted to primary government dealers, while noncompetitive bids are open to individual investors and small institutions.

Secondary market trading in government securities occurs in the over-the-counter (OTC) market. All government securities are traded OTC, with the primary government securities dealers being the largest market participants. In the secondary market a wide variety of investors use bonds for investing, hedging, and speculation. These investors include

² See “Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules,” SEC Division of Trading and Markets (November 7, 2007).

commercial and investment banks, insurance companies, pension funds, mutual funds, and retail investors.

Government Securities Dealer Registration—17 CFR 400 (Applies to Dealer Banks)

A bank that engages in government securities dealer activities, and associated persons who are government securities principals or representatives, must file certain forms with the OCC's Market Risk Division.³

- **Form G-FIN:** A bank that intends to engage in government securities dealer activities must notify the OCC by filing Form G-FIN, “Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities.” This form details the bank’s capacity, the locations where government securities dealer activities will be performed, and the persons responsible for the supervision of these activities (see 17 CFR 400.1(d) and 449.1).
- **Form G-FIN-4:** Every associated person of a bank that is a government securities dealer must file with the bank a completed Form G-FIN-4, “Disclosure Form for Person Associated With a Financial Institution Government Securities Broker or Dealer.” The bank is required to make inquiries of every employer of the associated person within the last three years regarding the accuracy and completeness of the information on G-FIN-4. 17 CFR 400.4 requires government securities dealers to file these forms with the OCC within 10 days of receipt. If any such information becomes materially inaccurate or incomplete, the applicant must furnish the correct or missing information to the bank and the OCC (see 17 CFR 400.4 and 449.3).
- **Form G-FIN-5:** Within 30 days after an associated person ceases to be associated with the government securities dealer function of the bank, the bank must notify the OCC by filing Form G-FIN-5, “Uniform Termination Notice for Person Associated With a Financial Institution Government Securities Broker or Dealer.” This form details the reason for the termination, and any adverse reasons for termination should be investigated (see 17 CFR 400.4(d)(2) and 449.4).
- **Form G-FINW:** A bank that is no longer engaged in government securities dealer activities must notify the OCC by filing Form G-FINW, “Notice by Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer” (see 17 CFR 400.6 and 449.2).

Examiners may obtain a bank’s current G-FIN filing, along with the bank’s current list of registered government securities principals and representatives, from the OCC’s Market Risk Division.

³ The forms—G-FIN, G-FINW, G-FIN-4, and G-FIN-5—are available at www.occ.gov. Filing instructions are located on the forms.

Hold-in-Custody Repurchase Agreements—17 CFR 403.5

(Applies to Dealer and Non-Dealer Banks)

All banks that retain custody of government securities sold under an agreement to repurchase must comply with the requirements for hold-in-custody repurchase agreements described in 17 CFR 403.5.⁴ A repurchase agreement is a contract to sell securities and subsequently to repurchase them at a specified price and at a specified time. Repurchase agreements, which are typically executed on U.S. government securities, are usually very short-term. A “sweep” repurchase agreement moves funds out of a customer’s deposit account at the end of the business day and into an overnight repurchase agreement. Term repurchase agreements, on the other hand, are structured to be in effect for a specific period of time, typically more than one day.

For purposes of the GSA, a bank is considered to be retaining custody of the repurchase agreement securities when the securities are maintained at the bank or maintained through an account at another institution (e.g., a correspondent bank or the local Federal Reserve Bank) and the securities continue to be under the bank’s control. The following requirements apply to all hold-in-custody repurchase agreements:

- Hold-in-custody repurchase agreements must be transacted pursuant to a written repurchase agreement, which the bank must obtain (see 17 CFR 403.5(d)(1)(i)).
- The bank must confirm in writing the specific securities that are the subject of a repurchase transaction pursuant to such agreement at the end of the day the transaction is initiated (see 17 CFR 403.5(d)(1)(ii)).
- The bank issuing a hold-in-custody repurchase agreement must disclose to the customer in writing that the funds held pursuant to a repurchase agreement are not a deposit, and therefore not insured by the Federal Deposit Insurance Corporation (FDIC) (see 17 CFR 403.5(d)(1)(iii)).
- The frequency or short duration of a particular type of transaction, such as an overnight repurchase agreement or a daily sweep of a customer’s deposits into a hold-in-custody repurchase transaction, does not eliminate the requirement for a bank to send a prompt and accurate confirmation to the customer. OCC Advisory Letter 1996-2, “Overnight Hold-in-Custody Repurchase Transactions,” reiterates that GSA regulations require daily confirmations for overnight hold-in-custody repurchase agreement transactions. This requirement is applicable to both national banks and FSAs.
- Confirmations must identify the specific securities by issuer, maturity, coupon, par amount, market value, and Committee on Uniform Security Identification Procedures (CUSIP) or mortgage pool number of the underlying securities (see 17 CFR 403.5(d)(2)(i)).

OCC Bulletin 1993-48, “Department of Treasury Hold-in-Custody Repurchase Transactions,” sets forth interpretive guidance concerning the required timing of the allocation of securities to customer accounts (repurchase agreement collateral) in hold-in-

⁴ See OCC Bulletin 1998-6, “Repurchase Agreements of Depository Institutions With Securities Dealers and Others.”

custody repurchase transactions. This guidance applies to national banks and FSAs. In particular, to remain in compliance with GSA regulations, a bank must complete the securities allocation process for hold-in-custody repurchase transactions before opening the next business day. Further, for an allocation to be in compliance, the bank's records must identify and list the specific securities that are allocated to each customer in authorized, transferrable denominations. The requirement that a bank must maintain and allocate specific securities to specific customers is aimed at protecting customer securities in the event of the bank's failure. Without timely and proper allocation, it may not be clear if an interest in the securities has been conveyed to the counterparty. The allocation requirement focuses on eliminating duplicative use of securities as well as precluding pooling of securities (i.e., failing to identify and record specific securities on the bank's books and records).

Current GSA regulations permit a bank to substitute government securities in a hold-in-custody repurchase transaction so long as the bank meets certain disclosure and confirmation requirements (see 17 CFR 403.5(d)(1)). The FDIC, however, has expressed concerns about the ability to perfect a security interest when there is a substitution clause in a repurchase sweep agreement.⁵ According to the FDIC, in an improperly executed repurchase agreement sweep, the sweep customer obtains neither an ownership interest nor a perfected interest in the applicable securities. The FDIC has further stated that if a substitution clause is present in the repurchase sweep agreement, the bank should acknowledge that substitution will not be exercised and should indicate this to the customer through the sweep disclosure. Further, newly issued or amended repurchase sweep agreements, including contract renewals, should not contain a substitution clause, according to the FDIC.

Due Bills—17 CFR 403.5(b) (Applies to Dealer and Non-Dealer Banks)

If a bank sells, collects the proceeds, and fails to deliver a security, a due bill exists in favor of the paying customer. In the event that a bank has accepted funds from a customer for the purchase of securities and the bank does not initiate the purchase of the specified securities by the close of the next business day, the bank is required to immediately deposit or redeposit the funds in an account belonging to the customer and send the customer notice of such deposit or redeposit (see 17 CFR 403.5(b)).

OCC Banking Circular 182, "Issuance of 'Due Bills' to Customers Purchasing Securities," sets forth additional guidelines concerning the proper use of "due bills." This guidance is applicable to both national banks and FSAs. In particular, to satisfy disclosure obligations under the federal securities laws, banks are required to make full written disclosure, on a timely basis, to affected customers of all material facts and circumstances concerning due bills. Under no circumstances should a bank send a due bill customer any document (such as a safekeeping receipt) that has the potential to mislead the customer into believing a security has been acquired for the customer's account, until such time that the actual security is delivered for the customer's account.

⁵ See FDIC Financial Institution Letter FIL-39-2009, "Sweep Account Disclosure Requirements, Frequently Asked Questions."

Failure to inform customers or the use of misleading documents about due bill transactions could be considered a violation of the anti-fraud provisions of federal securities laws. Due bills outstanding more than three business days are subject to demand deposit reserve requirements, unless the due bill is fully collateralized by securities similar to, and with a market value at least equal to, those securities that are the subject of the due bill transaction (see 12 CFR 204.2(a)(1)(iv)).

A security is similar if it is of the same type and of comparable maturity to that purchased by the customer. For example, if a U.S. Treasury bill is the subject of a due bill transaction, collateralization should be provided in the form of other U.S. Treasury bills with a market value at least equal to that of the security sold. A pool of securities may be used to collateralize due bills so long as the type, maturity, and market value requirements are met. Acceptable uses for due bills should be defined by policy and comply with the requirements outlined in 17 CFR 403.5(b) and Banking Circular 182.

Records to Be Made and Preserved—17 CFR 404.4

(Applies to Dealer Banks)

A bank that engages in government securities dealer activities must comply with the record-keeping requirements of 17 CFR 404.4, unless all of the following requirements are met:

- The bank complies with the record-keeping requirements of 12 CFR 12 (for national banks) and 12 CFR 151 (for FSAs). (Refer to the “Record-Keeping and Confirmation Requirements—12 CFR 12 and 12 CFR 151” section in this booklet.)
- The bank complies with the record-keeping requirements of 17 CFR 450.4(c), (d), and (f). (Refer to the “Custodial Holdings of Government Securities—17 CFR 450” section in this booklet.)
- The bank makes and keeps current
 - A securities record or ledger reflecting separately for each government security as of the settlement dates all “long” or “short” positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) the bank carries for its own account, for customers’ accounts, or for others (except securities held in a fiduciary capacity). The record or ledger should show the location of all government securities long and the offsetting position to all government securities short, including long security count differences and short security count differences classified by the date of the count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried. The records required by this section must be preserved for not less than six years, the first two years in an easily accessible place.
 - A complete and current Form G-FIN-4 for each associated person and a Form G-FIN-5 for each associated person whose association has been terminated. The records required by this section must be preserved for at least three years after the associated person has terminated his or her employment and any other association with the government securities dealer function of the bank.

- A complete and current Form G-FIN and, if applicable, a Form G-FINW. The records required by this section must be preserved for at least three years after the bank has notified the OCC that it has ceased to function as a government securities dealer.

Large Position Reporting—17 CFR 420

(Applies to Dealer and Non-Dealer Banks)

The U.S. Department of the Treasury's large position rules (17 CFR 420), which were issued in final form on September 12, 1996 (61 Fed. Reg. 48348), establish record-keeping and reporting requirements for entities that control large positions in certain U.S. Treasury securities. The rules put in place an on-demand reporting system that, in response to a notice by the Treasury Department requesting large position information, requires large position reports to be filed by entities that control a position in a particular U.S. Treasury security or securities equaling or exceeding the specified large position threshold. The Treasury Department has stated that the large position threshold will not fall below \$2 billion. The Treasury Department will provide notice requesting large position reports by issuing a news release and publishing a notice in the *Federal Register*. The news release will be made available to major news media and financial organizations and electronic wire services for dissemination.

The rules are intended to improve the information available to the Treasury Department and other regulators regarding concentrations of control and to ensure that regulators have the tools necessary to monitor the U.S. Treasury securities market. Large positions, in and of themselves, are not inherently harmful, and there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because it is required to submit a large position report in response to these rules.

With the exception of foreign official organizations and the Federal Reserve Banks, the Treasury Department's large position record-keeping and reporting rules apply to all entities, foreign and domestic, that may control a reportable position in a recently issued U.S. Treasury security. This includes, but is not limited to, government securities brokers and dealers, registered investment companies, registered investment advisers, depository institutions that exercise investment discretion, hedge funds, pension funds, insurance companies, foreign banks, and foreign affiliates of U.S. entities.

The Treasury Department has prepared a question and answer (Q&A) document to assist entities, including banks, in determining whether the entities or their affiliates are subject to the record-keeping and reporting requirements. Because the rules apply to a wide variety of bank and affiliate activities, including portfolio investments, broker-dealers, foreign affiliates, and fiduciary activities, each bank should review the Q&As to determine whether it could be subject to the record-keeping or reporting requirements. The Q&As and the large position rules can be obtained from the Treasury Department's Web site, www.treasurydirect.gov.

Custodial Holdings of Government Securities—17 CFR 450

(Applies to Dealer and Non-Dealer Banks)

Banks that hold or safekeep U.S. government securities for customers must comply with 17 CFR 450. This regulation applies when a bank either holds customer securities directly or maintains customer securities through another institution. The Treasury Department has determined that the OCC rules and standards applying to government securities held in a fiduciary capacity are adequate to meet the requirements of this regulation. Thus, a bank is exempt from part 450 requirements provided the following two conditions are met:

- The bank must adopt policies and procedures that subject the custodial holdings to all of the requirements of OCC regulation 12 CFR 9 (for national banks) and 12 CFR 150 (for FSAs). In particular, 12 CFR 9.13 (for national banks) or 12 CFR 150.230-250 (for FSAs) require that a bank maintain joint custody over assets held in a fiduciary account, that such assets are kept separate from bank assets, and that these assets are properly identified as the property of a particular account (see 17 CFR 450.3(a)(1)).
- Such custodial holdings must be subject to examination by the OCC for compliance with such fiduciary requirements (see 17 CFR 450.3(a)(2)).

Absent the parts 9 and 150 exemption, banks must comply with the custodial holding requirements of part 450 by observing the following requirements:

- All government securities held for customers, including those subject to repurchase agreements with customers, must be segregated from the bank's own assets and kept free from any lien of any third party granted or created by the bank (see 17 CFR 450.4 (a)(1)).
- A bank that holds securities for a customer through another institution ("custodian institution") must notify the custodian institution that the securities are customer securities (see 17 CFR 450.4(a)(2)(i)(A)).
- The custodian institution must maintain the customer securities in an account that is designated for customers of the bank and does not contain securities owned by the bank, and must treat the securities as customer securities separate from any other securities held for the account of the bank (see 17 CFR 450.4(a)(2)(i)(B) and (ii)).
- The bank must notify the custodian institution that these securities are to remain free of any lien, charge, or claim in favor of the custodian or any persons attempting to make a claim through the custodian (see 17 CFR 450.4(a)(2)(i)(C)).

When a bank maintains customer securities in an account at a Federal Reserve Bank, it is deemed to be in compliance with requirements to hold customer securities free of lien if any lien of the Federal Reserve Bank, or other party claiming through it, expressly excludes customer securities. The bank is not required to maintain customer securities in a separate custody account at the Federal Reserve Bank, but such segregation is encouraged.

Regardless of where the bank holds government securities for customers, the bank must segregate customer securities on its own records and observe the following record-keeping requirements:

- A bank safekeeping U.S. government securities for customers must issue customers a confirmation or safekeeping receipt for each government security held (see 17 CFR 450.4(b)(1)). **Note:** U.S. government securities that are the subject of repurchase agreement transactions are subject to the confirmation requirements of 17 CFR 403.5(d).
- The confirmation or safekeeping receipt must identify the issuer, maturity date, par amount, and coupon rate of the security being confirmed (see 17 CFR 450.4(b)(1)).
- A records system of government securities held for customers must be maintained separate and distinct from the bank's other records (see 17 CFR 450.4(c)). These records must
 - identify each customer and each government security held for a customer (or the amount of each issue of a government security issued in book-entry form).
 - describe the customer's interest in the security.
 - indicate all receipts and deliveries of securities and all receipts and disbursements of cash in connection with the securities.
- A copy of the safekeeping receipt or confirmation given to customers must be maintained (see 17 CFR 450.4(c)(4)).
- This system of records must provide an adequate basis for audit (see 17 CFR 450.4(c)(5)).
- The bank providing customer safekeeping is required to conduct a count of physical securities and securities held in book-entry form at least annually and to reconcile the count with customer account records (see 17 CFR 450.4(d)).
- In order to count securities held outside of the bank, such as book-entry securities held at a Federal Reserve Bank, the bank must reconcile its records with those of the outside custodian (see 17 CFR 450.4(d)(1)).
- The bank responsible for the count must verify any securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive or deliver, or subject to a repurchase or reverse repurchase agreement, when the securities have been in such status for longer than 30 days (see 17 CFR 450.4(d)(2)).
- The dates and results of the counts and reconcilements must be documented within seven business days of the required count, with the differences in securities counts noted (see 17 CFR 450.4(d)(3)).
- The required records for part 450 must be maintained in an easily accessible place for at least two years and not be disposed of for at least six years (see 17 CFR 450.4(f)).

Other Supervisory Expectations

Record-Keeping and Confirmation Requirements—12 CFR 12 and 12 CFR 151

(Applies to Dealer and Non-Dealer Banks)

OCC regulations 12 CFR 12 (for national banks) and 12 CFR 151 (for FSAs) include minimum record-keeping, record retention, and confirmation requirements for securities transactions effected by banks for customers. These regulations are applicable to both government securities dealers and non-dealer banks. The regulations define the specific information that must be recorded and retained for each effected securities transaction. The

regulations also define specific information about securities transactions that must be provided to customers within designated time frames. There are alternative notification procedures and time frames based on the type of client relationship and the terms of the client agreement. Banks should ensure that internal records of securities transactions and customer confirmations comply with the record-keeping, record retention, and confirmation requirements of 12 CFR 12 (for national banks) and 12 CFR 151 (for FSAs).

A bank effecting securities transactions for customers shall maintain the following records for at least three years (see 12 CFR 12.3 for national banks and 151.50 for FSAs):

- An itemized daily record of each purchase and sale of securities, maintained in chronological order and including
 - account or customer name for which each transaction was effected.
 - description of the securities.
 - unit and aggregate purchase or sale price.
 - trade date.
 - name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold.
- Account records for each customer, reflecting
 - purchases and sales of securities.
 - receipts and deliveries of securities.
 - receipts and disbursements of cash.
 - other debits and credits pertaining to transactions in securities.
- A separate memorandum (order ticket) of each order to purchase or sell securities, whether executed or canceled, including
 - account or customer name for which the transaction was effected.
 - type of order (market order, limit order, or subject to special instructions).
 - time the trader or other bank employee responsible for effecting the transaction received the order.
 - time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled.
 - price at which the order was executed.
 - name of the broker/dealer used.
- A record of all broker/dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each broker during the calendar year.
- A copy of the written notification required by 12 CFR 12.4 and 12.5 for national banks and 12 CFR 151, subpart B, for FSAs.

A bank effecting securities transactions for customers shall give or send to the customer either a copy of the broker/dealer confirmation or written notification disclosing the following (see 12 CFR 12.4 for national banks and 12 CFR 151.70-151.90 for FSAs):

- Bank's name.
- Bank's capacity (for example, as agent).
- Customer's name.

- Date of execution.
- Time of execution or a statement that the time of execution will be furnished upon the customer's written request.
- Description, number of shares, and price of securities purchased or sold.
- Name of the registered broker/dealer used, or when there is no registered 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 bank will furnish this information within a reasonable time upon written request from the customer.
- Amount of remuneration the customer provided or is to provide the broker/dealer, directly or indirectly, in connection with the transaction.
- Source and amount of any remuneration received by the bank (from the customer or anyone else) in connection with the transaction, unless the bank and its customer have determined remuneration pursuant to a written agreement or the bank received the remuneration in other than an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has received or will receive from a party other than the customer, the written notification must disclose that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer.
- Dollar price at which the transaction was effected and the current yield, yield to maturity, or yield to call.
- Effect that early redemption (if applicable) could have on the yield represented, and that additional information is available upon request.
- Non-membership in the Securities Investor Protection Corporation, if that is the case (FSAs only).

A bank effecting securities transactions for customers may elect to use the following notification procedures as an alternative to complying with the notification procedures required by 12 CFR 12.4 for national banks and 12 CFR 151.80 or 151.90 for FSAs (see 12 CFR 12.5 for national banks and 12 CFR 151.100 for FSAs):

- A 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 CFR 12.4 (a) or (b) for national banks and 12 CFR 151.80 or 151.90 for FSAs at no additional cost to the customer.
- A 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. Upon request of the customer, the bank must provide the written notifications pursuant to 12 CFR 12.4(a) or (b) or 12 CFR 151.70.
- A national bank effecting a securities transaction for a periodic plan pursuant to 12 CFR 12.5 shall give or send to its customer, not less than once every three months, a written statement showing

- the customer’s funds and securities in the custody or possession of the bank.
- all service charges and commissions paid by the customer in connection with the transaction.
- all other debits and credits of the customer’s account involved in the transaction.
- An FSA effecting a securities transaction for a periodic plan pursuant to 12 CFR 151.100 shall give or send to its customer, within five business days after the end of each quarterly period, a written statement disclosing
 - each purchase and redemption effected for or with, and each dividend or distribution that was credited to or reinvested for, the customer’s account during the period.
 - the date of each transaction.
 - the identity, number, and price of any securities the customer purchased or redeemed in each transaction.
 - the total number of shares of the securities in the customer’s account.
 - any remuneration received or to be received in connection with the transaction.
 - that the FSA will give or send the registered broker-dealer confirmation described in 12 CFR 151.80 or the written notice described in 12 CFR 151.90 within a reasonable time after the customer’s written request.

Note: The record-keeping requirements of 12 CFR 12.3 for national banks and 12 CFR 151.50 for FSAs do not apply to non-dealer banks effecting fewer than 500 government securities brokerage transactions per year, but non-dealer banks that effect government securities transactions for customers are required to comply with the customer notification requirements of 12 CFR 12.4 for national banks and 12 CFR 151.70 for FSAs.

OCC Advisory Letter 1996-5, “Forward Repurchase Agreement Transactions,” sets forth interpretive guidance concerning the record-keeping and confirmation requirements for forward repurchase agreement transactions effected, by dealer banks. This guidance is applicable to national banks and FSAs. Forward repurchase agreements are repurchase and reverse repurchase agreements that settle in the future. Typically involving when-issued securities, forward repurchase agreements are treated as off-balance-sheet items, because there is usually no exchange of funds or securities until the settlement date. According to the guidance, dealer banks should prepare order tickets at the initiation of the forward repurchase transaction and reflect these unsettled future transactions on the bank’s trade blotter. The guidance also recommends sending an additional confirmation on the trade date.

Government Securities Sales Practices—12 CFR 13

(Applies to Dealer Banks)

OCC regulation 12 CFR 13, “Government Securities Sales Practices,” applies to national banks that have filed notice as, or are required to file notice as, government securities dealers pursuant to section 15C of the Exchange Act and Treasury Department rules under section 15C (17 CFR 400.1(d) and 401). 12 CFR 13 requires national banks to observe certain suitability standards when dealing in government securities with customers. Currently, there are no similar regulations for FSAs. The OCC has determined, however, that, as a matter of safe and sound banking practices, FSAs operating as government securities dealers should adhere to the suitability standards contained in 12 CFR 13.

Pursuant to 12 CFR 13, a bank that is a government securities broker or dealer must observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business as a government securities broker or dealer. In recommending to a customer the purchase, sale, or exchange of a government security, a bank that is a government securities broker or dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer. This belief must be based on the facts, if any, disclosed by the customer as to the customer's other security holdings and as to the customer's financial situation and needs. Before executing a transaction recommended to a noninstitutional customer, a bank that is a government securities broker or dealer shall make reasonable efforts to obtain information concerning

- customer's financial status.
- customer's tax status.
- customer's investment objectives.
- such other information used or considered to be reasonable by the bank in making recommendations to the customer.

Banks also have suitability obligations when making recommendations to institutional customers. A bank's responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing that the recommendation is suitable for the customer to whom it is made. Banks are expected to meet the same high standards of competence, professionalism, and good faith regardless of the customer's financial circumstances.

While it is difficult to define in advance the scope of a bank's suitability obligation with respect to a specific institutional customer transaction recommended by a bank, the OCC has identified certain factors that may be relevant when evaluating compliance with 12 CFR 13.4. These factors are not intended to be requirements or the only factors to be considered, but are offered as guidance to help a bank determine the scope of its suitability obligations.

The two most important considerations in determining the scope of a bank's suitability obligations in making recommendations to an institutional customer are the customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgment in evaluating a bank's recommendation.

A determination of capability to evaluate investment risk independently depends on an examination of the customer's capability to make investment decisions, including the resources available to the customer to make informed decisions. Relevant considerations could include

- use of one or more consultants, investment advisers, or bank trust departments.
- general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration.
- customer's ability to understand the economic features of the security involved.

- customer's ability to independently evaluate how market developments would affect the security.
- complexity of the security or securities involved.

A bank may conclude that a customer is exercising independent judgment if the customer's investment decision is based on the customer's independent assessment of the opportunities and risks presented by a potential investment, market factors, and other investment considerations. If the bank has reasonable grounds for concluding that the institutional customer is making independent investment decisions and is capable of independently evaluating investment risk, then a bank's obligations under 12 CFR 13.4 for that particular customer are fulfilled. If a customer has delegated decision-making authority to an agent, such as an investment advisor or a bank trust department, the interpretation in this section shall be applied to the agent.

SEC Anti-Fraud Provisions

(Applies to Dealer and Non-Dealer Banks)

Banks' transactions in government securities are subject to the anti-fraud provisions of section 10(b) of the Exchange Act and SEC Exchange Act Rule 10b-5, as well as section 17(a) of the Securities Act of 1933. Common sales practice abuses relative to these provisions of the law include markups, suitability, churning, unauthorized trading, and misleading or false advertising or representations about securities. Specifically, SEC Exchange Act Rule 10b-5, codified at 17 CFR 240.10b-5, states the following:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

- to employ any device, scheme, or artifice to defraud;
- to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

If there is evidence that the government securities dealer has engaged in any deceptive, dishonest, or unfair practice, examiners should consult with the OCC's Market Risk Division and Securities & Corporate Practices Division to determine whether a referral should be made to the SEC or the OCC should initiate an enforcement action.

Incentive Compensation

(Applies to Dealer Banks)

Incentive compensation arrangements can be useful tools in the successful management of banking organizations, but such arrangements can provide executives and employees with incentives to take imprudent risks that are not consistent with the bank's long-term health. If

the bank offers incentive compensation programs, the examiner should ensure that the programs are consistent with OCC Bulletin 2010-24, “Interagency Guidance on Sound Incentive Compensation Policies.” To be consistent with safety and soundness, a bank’s incentive compensation arrangements should comply with the following key principles:

- Provide employees incentives that appropriately balance risk and reward.
- Be compatible with effective controls and risk management.
- Be supported by strong corporate governance, including active and effective oversight by the organization’s board of directors.

The OCC expects banks to regularly review their incentive compensation arrangements for all executive and nonexecutive employees who, either individually or as part of a group, have the ability to expose the organization to material amounts of risk, and to regularly review the risk management, control, and corporate governance processes related to these arrangements. Banks should immediately address any identified deficiencies in these arrangements or any processes that are inconsistent with safety and soundness.

Examination Procedures (Dealer Banks)

This booklet contains expanded procedures for examining specialized activities or specific products or services that warrant extra attention beyond the core assessment contained in the “Community Bank Supervision,” “Large Bank Supervision,” and “Federal Branches and Agencies Supervision” booklets of the *Comptroller’s Handbook*. Examiners determine which expanded procedures to use, if any, during examination planning or after drawing preliminary conclusions during the core assessment.

Note: The following procedures should be performed only in banks that are government securities dealers.

Scope

The determination of the scope of this examination should consider work performed by internal and external auditors and other independent risk control functions. Examiners should coordinate work with examiners responsible for the oversight and examination of the bank’s trading activities. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objective. See appendix A for a sample request letter.

Objective: To determine the scope of the examination of government securities dealer activities and identify examination objectives and procedures necessary to meet the needs of the supervisory strategy for the bank.

1. Review the following sources of information and note any previously identified problems related to the bank’s government securities dealer activities that require follow-up:
 - Supervisory strategy.
 - Examiner-in-charge’s (EIC) scope memorandum.
 - OCC’s information system.
 - Previous reports of examination (ROE), related Supervisory Letters, and work papers.
 - Internal and external audit reports and work papers.
 - Compliance reports and work papers.
 - Bank management’s responses to previous ROEs, Supervisory Letters, matters requiring attention (MRA), and audit reports.
 - Customer complaints and litigation.
2. Obtain and review policies, procedures, and reports bank management uses to supervise the bank’s government securities dealer activities, including internal risk assessments.
3. In discussions with bank management, determine whether there have been any significant changes (for example, in policies, processes, personnel, control systems, products, volumes, markets, and geographies) since the prior examination of the bank’s government securities dealer activities.

4. Obtain transaction data for the prior year to help in defining the volume and type of activity conducted by the government securities dealer.
5. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, determine the scope and objectives of the bank's government securities dealer activities examination.
6. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy.

Functional Areas Procedures

Supervision

Objective: To determine the adequacy of supervision of the bank's activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

1. Banks acting as government securities brokers or dealers are required to notify the OCC of the capacity in which they are acting. Notification is accomplished by completing and filing a Form G-FIN with the OCC (see 17 CFR 400.1(d) and 449.1). Determine whether the bank has filed Form G-FIN with the OCC. If the information contained in the form or in any of its amendments is inaccurate, determine whether the bank has filed an amended Form G-FIN with the OCC (see 17 CFR 400.5(b)).

Note: Contact the OCC's Market Risk Division for a copy of the bank's G-FIN filing(s).

2. For each associated person, determine whether the dealer
 - submitted a Form G-FIN-4 (or Form U-4 or Form MSD-4, if applicable) to the OCC within 10 days of the person's association with the bank and whether the bank maintains current and complete copies on file (see 17 CFR 400.4(a) and (d)(1) and 449.3).
 - made inquiries of every employer of the associated person within the last three years regarding the accuracy and completeness of the information on the G-FIN-4 (see 17 CFR 400.4(c)).
 - submitted a Form G-FIN-5 (or Form U-5 or Form MSD-5, if applicable) within 30 days after an associated person ceases to be associated with the government securities dealer (see 17 CFR 400.4(d)(2) and 449.4). Review Form G-FIN-5 for terminations with cause or other patterns that may cause concern.

Note: Contact the OCC's Market Risk Division for a list of the bank's G-FIN-4 and G-FIN-5 filings.

3. Assess the adequacy of the bank's written government securities policies (including those regarding the GSA) to determine whether the policies provide appropriate guidance for managing the bank's government securities dealer activities and are consistent with applicable laws, regulations, and safe and sound banking practices. Determine whether the board of directors (board) or a designated committee reviews the policies for adequacy at least annually.
4. Determine whether one or more government securities supervisors have been designated as responsible for supervising the activities and business of the dealer and the activities of the dealer's associated representatives, and, if so, note name(s) and area(s) of responsibility.

5. Evaluate management's commitment to correcting MRAs cited in ROEs. If MRAs have not been corrected, determine why.
6. Determine whether all violations, possible violations, or deficiencies that have been reported to the board or designated committee by either the audit staff or compliance staff have been corrected or adequately addressed.
7. Determine whether the dealer department maintains a written customer complaint file. Determine whether customer complaint follow-up memorandums are prepared, submitted to, and approved by senior managers.
8. Determine the type of compensation program established for the bank's government securities dealer employees. If government securities dealer employees are compensated pursuant to an incentive compensation program, determine whether the program is consistent with the guidelines in OCC Bulletin 2010-24, "Interagency Guidance on Sound Incentive Compensation Policies," including compliance with its three key principles:
 - Provide employees with incentives that appropriately balance risk and reward.
 - Be compatible with effective controls and risk management.
 - Be supported by strong corporate governance, including active and effective oversight by the bank's board.

Compliance Management

Objective: To determine the adequacy of the bank's compliance management activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

(The audit department, compliance department, or both can perform compliance management.)

9. Determine whether the bank has a government securities dealer and a GSA compliance or audit program.
10. Determine whether the program calls for compliance testing of the bank's government securities dealer and GSA-related activities and establishes the following criteria:
 - Frequency.
 - Scope.
 - Timing and method for testing new product compliance.
11. Determine whether there is a person responsible for the bank's compliance with applicable government securities dealer and GSA-related rules, laws, and regulations, and whether that person

- is independent.
 - is qualified (based on training and experience) to monitor effectively the assigned areas.
 - performs periodic (at least annual) reviews of all government securities dealer activities to determine compliance.
12. Determine whether the scope of the bank's government securities dealer and GSA compliance review is sufficient to review compliance with laws, rules, regulations, and policy restrictions.
13. Determine whether the person responsible for the bank's government securities dealer and GSA compliance prepares a written government securities dealer compliance report and presents it to the board or designated board committee at least annually.

Customer Protection

Objective: To determine the effectiveness of the bank's processes and controls related to customer protection requirements.

Suitability of Recommendations and Transactions (12 CFR 13)

14. Review selected noninstitutional account customer files to determine whether
- before recommending a government security transaction, the dealer has obtained and retained all appropriate noninstitutional customer information (financial background, tax status, investment objectives, etc.) required by 12 CFR 13.5.
 - in recommending to a customer any government security transaction, the dealer has reasonable grounds, based on the facts disclosed by the customer or otherwise known about the customer, for believing that the recommendation is suitable.
15. Review selected institutional account customer files to determine whether
- the dealer has made the correct determination that the customer is an institutional customer and not a noninstitutional customer as defined in 12 CFR 13.2(d).
 - before recommending a government security transaction, the dealer has considered the guidelines outlined in 12 CFR 13.100, including the customer's capability to evaluate investment risk independently and the extent to which the customer is exercising independent judgment.
 - in recommending to a customer any government security transaction, the dealer has reasonable grounds, based on the facts disclosed by the customer or otherwise known about the customer, for believing that the recommendation is suitable.

Custody of Customer-Owned Securities (17 CFR 403.5)

16. Determine whether the bank has established adequate written procedures and internal controls to determine, on each business day, the quantity and issue of such securities, if any, that are required to be but are not in the bank's possession or control (see 17 CFR 403.5(c)(2)).
17. Determine whether the procedures address
 - releases of liens, charges, or encumbrances against affected securities.
 - returns of securities loaned.
 - steps to obtain possession or control of securities the bank has failed to receive for more than 30 days (or more than 60 days for mortgage-backed securities).
 - "buying in" securities as necessary when securities shortages in possession or control cannot be resolved by any of the preceding procedures.
18. If the bank retains custody of securities that are the subject of a repurchase transaction, determine the following:
 - Was the transaction conducted pursuant to a written repurchase agreement? (See 17 CFR 403.5(d)(1)(i).)
 - Does the repurchase agreement grant the bank the right to substitute securities? If yes, does the bank acknowledge that substitution will not be exercised and indicate this through the sweep disclosure to the customer? (Refer to the "Hold-in-Custody Repurchase Agreements" section of this booklet for the FDIC's expectations on perfecting a security interest.)
 - Did the bank confirm in writing the specific securities that are the subject of the repurchase transaction at the end of the day the transaction was initiated? (See 17 CFR 403.5(d)(1)(ii).)
 - Did the confirmation identify the specific securities by issuer, maturity, coupon, par amount, market value, and CUSIP or mortgage pool number of the underlying securities? (See 17 CFR 403.5(d)(2)(i).)
(**Note:** The pooling of securities as collateral for repurchase agreements is not permitted. The frequency or short duration of a particular type of transaction, such as an overnight repurchase agreement or a daily sweep of a customer's deposits into a hold-in-custody repurchase transaction, does not eliminate the requirement for a bank to send a prompt and accurate confirmation to the customer.)
 - Did the bank disclose to the customer in writing that the funds held pursuant to a repurchase agreement are not a deposit, and therefore not insured by the FDIC? (See 17 CFR 403.5(d)(1)(iii).)
 - Did the bank maintain possession or control of securities that are the subject of the repurchase agreement? (See 17 CFR 403.5(d)(1)(vi).)

Due Bills (17 CFR 403.5(b))

19. If the bank has accepted customer funds for securities purchases but has not placed the order by the close of the next business day after receipt, determine whether the bank immediately deposits or redeposits the funds in the customer's account and sends the customer notice of such deposit or redeposit.
20. Determine whether the bank complies with Banking Circular 182 when issuing due bills to customers.

Record-Keeping 'Long' and 'Short' Positions (17 CFR 404.4)

21. Determine whether the bank's government securities records or ledgers separately reflect, as of the settlement date
 - all long and short positions (including securities that are the subjects of repurchase and reverse repurchase agreements) carried by the bank for
 - its own account.
 - accounts of its customers or others (excluding securities held in a fiduciary capacity).
 - location of all government securities "long."
 - offsetting position to all government securities "short."
 - long or short government security count differences.
 - inclusion in government security count difference records of
 - date of the count and verification in which the discrepancies were discovered.
 - name or designation of the account in which each position is carried.
22. Verify that the bank established procedures to ensure that securities records are retained in accordance with retention requirements. The records must be maintained for not less than six years, with the first two years of records in an easily accessible place.

Large Position Reporting (17 CFR 420)

23. Determine whether the bank meets the Treasury Department's large position reporting threshold (when the bank controls a position of \$2 billion or more in a U.S. Treasury security it meets the threshold). (See 17 CFR 420.2.)
24. Determine whether the bank has procedures in place to comply with the Treasury Department's calls for large position reports. (See 17 CFR 420.3.)
25. Determine whether the bank has complied with any recent calls by the Treasury Department for large position reports. (See www.treasurydirect.gov.)
26. Determine whether the bank complies with the Treasury Department's large position record-keeping requirements. (See 17 CFR 420.4.)

Customer Holdings Subject to Fiduciary Standards (17 CFR 450.3)

The bank is exempt from the requirements of part 450 if the responses to questions 27 and 28 are yes. If the bank maintains custody of securities that are not subject to examination for compliance with OCC regulation 12 CFR 9 (national banks) or 12 CFR 150 (FSAs), the bank must comply with part 450.

27. Does the bank exercise fiduciary powers?

28. Determine whether the bank's custodial holdings of government securities

- are administered pursuant to written policies and procedures that apply all of the applicable fiduciary requirements imposed by OCC regulation 12 CFR 9.13 (national banks) or 12 CFR 150.230-250 (FSAs), including
 - the bank maintains joint custody over the assets held.
 - the assets are kept separate from bank assets.
 - the assets are properly identified as the property of a particular account.
- are subject to examination by the OCC for compliance with such fiduciary requirements.

Customer-Owned Securities Maintained On-Site (17 CFR 450.4(a)(1))

29. Determine whether, if the bank is not exempt and maintains custody of securities on its premises, government securities held for customers are segregated from the bank's assets and kept free from liens of any third party or the bank.

Customer-Owned Securities Maintained at a Third Party (17 CFR 450.4(a)(2))

Note: The bank is not required to have a segregated account at a Federal Reserve Bank for customer-owned securities if the securities are segregated in the bank's records.

30. If the bank is not exempt and does not maintain custody of securities on its premises, determine whether the bank maintains customer-owned securities at a third-party depository institution or a Federal Reserve Bank. If so, determine whether

- the bank has notified the third-party depository institution that such securities are customer-owned securities.
- the customer-owned securities are maintained in an account specifically designated for bank customers that does not contain securities belonging to the bank.
- the bank has instructed the third party to maintain such securities free from liens of the third party or any persons claiming through it, subject to a limited exception if a Federal Reserve Bank retains a lien on securities received during the day that are later determined to be customer securities (see 17 CFR 450.4(a)(3)(ii)).

Confirmation Requirements for Custodial Holdings (17 CFR 450.4(b))

The following confirmation requirements do not apply to a bank that retains custody of securities subject to a repurchase transaction. Confirmation requirements for banks that retain custody of securities subject to a repurchase transaction are addressed in part 403.5(d).

31. Determine whether the bank issues a safekeeping receipt or confirmation for each security held for customers.
32. Determine whether the safekeeping receipt or confirmation identifies
 - issuer.
 - maturity date.
 - par amount.
 - coupon rate.

Record-Keeping Requirements for Custodial Holdings (17 CFR 450.4(c))

33. Determine whether the bank's records of government securities held for customers are kept separate and distinct from other bank records.
34. Determine whether the bank's records
 - identify each customer.
 - identify each government security held for each customer (or the amount of each issue issued in book-entry form).
 - describe the customer's interest in the security.
 - indicate all receipts and deliveries of securities and receipts and disbursements of cash.
 - include a copy of the safekeeping receipt or confirmation issued for each government security held.
35. Determine whether the bank's records provide an adequate basis for an audit of the bank's record-keeping information.

Reconciliation Requirements for Custodial Holdings (17 CFR 450.4(d))

36. Determine whether the bank has established procedures to ensure that government securities held for customers in physical and book-entry form are counted at least annually and that such counts are also reconciled to customer account records. In order to count securities held outside of the bank, such as book-entry securities held at a Federal Reserve Bank, the bank must reconcile its records with those of the outside custodian (see 17 CFR 450.4(d)).

Note: The regulations require that all government securities held for customers be counted annually. A sample is not acceptable.

37. Determine whether the bank's procedures include verifying securities

- in transfer.
- in transit.
- pledged.
- loaned.
- borrowed.
- deposited.
- failed to receive.
- failed to deliver.
- subject to repurchase agreement.
- subject to reverse repurchase agreement.
- subject to the bank's control or direction, but not in its physical possession for longer than 30 days.

38. Determine whether the bank has developed procedures to document the dates and results of such counts and reconciliations and whether the procedures are adequate.

39. Determine whether differences are noted in a security count difference account not later than seven business days after the date of each required count and verification.

40. Determine whether the bank has established procedures to preserve the reconciliation records for not less than six years, the first two years in an easily accessible place (see 17 CFR 450.4(f)).

Record-Keeping and Confirmation Requirements (12 CFR 12 and 12 CFR 151)

A bank that effects securities transactions as a government securities dealer for customers is required to comply with the record-keeping and confirmation requirements of 12 CFR 12 for national banks and 12 CFR 151 for FSAs.

Securities Records

41. Determine whether the bank maintains the following securities records for at least three years (see 12 CFR 12.3 for national banks and 151.50 for FSAs):

- An itemized daily record of each purchase and sale of securities, maintained in chronological order and including
 - account or customer name for which each transaction was effected.
 - description of the securities.
 - unit and aggregate purchase or sale price.
 - trade date.
 - name or other designation of the broker/dealer or other person from whom the securities were purchased or to whom the securities were sold.

- Account records for each customer, reflecting
 - purchases and sales of securities.
 - receipts and deliveries of securities.
 - receipts and disbursements of cash.
 - other debits and credits pertaining to transactions in securities.
- A separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled), including
 - account or customer name for which each transaction was effected.
 - type of order (market order, limit order, or subject to special instructions).
 - time the trader or other bank employee responsible for effecting the transaction received the order.
 - time the trader placed the order with the broker/dealer, or if there was no broker/dealer, time the order was executed or canceled.
 - price at which the order was executed.
 - name of the broker/dealer used.
- A record of all broker/dealers selected by the bank to effect securities transactions and the commissions paid or allocated to each broker during the calendar year.
- A copy of the written notification required by 12 CFR 12.4 and 12.5 for national banks and 12 CFR 151, subpart B for FSAs.

Customer Notification

42. Determine whether the bank, upon effecting a government securities transaction for a customer, provides the customer either a copy of the broker/dealer confirmation or written notification disclosing the following (see 12 CFR 12.4 for national banks and 12 CFR 151.70-151.90 for FSAs):

- Bank's name.
- Bank's capacity (for example, as agent).
- Customer's name.
- Date of execution.
- Time of execution or a statement that the time of execution will be furnished upon the customer's written request.
- Description, number of shares, and price of securities purchased/sold.
- Name of the registered broker/dealer used, or when there is no registered 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 bank will furnish this information within a reasonable time upon written request from the customer.
- Amount of remuneration the customer provided or is to provide the broker/dealer, directly or indirectly, in connection with the transaction.
- Source and amount of any remuneration received by the bank (from the customer or anyone else) in connection with the transaction, unless the bank and customer have determined remuneration pursuant to a written agreement or the bank received the remuneration in other than an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has received or will receive from a party other

than the customer, the written notification must disclose that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer.

- Dollar price at which the transaction was effected and the current yield, yield to maturity, or yield to call.
- Effect that early redemption (if applicable) could have on the yield represented and that additional information is available upon request.
- Non-membership in the Securities Investor Protection Corporation, if that is the case (FSAs only).

Note: A bank effecting securities transactions for customers may elect to use the following notification procedures as an alternative to complying with the notification procedures required by 12 CFR 12.4 for national banks and 12 CFR 151.80 or 151.90 for FSAs (see 12 CFR 12.5 for national banks and 12 CFR 151.100 for FSAs):

- A 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 CFR 12.4 (a) or (b) for national banks and 12 CFR 151.80 or 151.90 for FSAs at no additional cost to the customer.
- A 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. Upon request of the customer, the bank must provide the written notifications pursuant to 12 CFR 12.4(a) or (b) or 12 CFR 151.70.
- A national bank effecting a securities transaction for a periodic plan pursuant to 12 CFR 12.5 shall give or send to its customer, not less than once every three months, a written statement showing
 - the customer's funds and securities in the custody or possession of the bank.
 - all service charges and commissions paid by the customer in connection with the transaction.
 - all other debits and credits of the customer's account involved in the transaction.
- An FSA effecting a securities transaction for a periodic plan pursuant to 12 CFR 151.100 shall give or send to its customer, within five business days after the end of each quarterly period, a written statement disclosing
 - each purchase and redemption effected for or with, and each dividend or distribution that was credited to or reinvested for, the customer's account during the period.
 - the date of each transaction.
 - the identity, number, and price of any securities the customer purchased or redeemed in each transaction.
 - the total number of shares of the securities in the customer's account.
 - any remuneration received or to be received in connection with the transaction.

- that the FSA will give or send the registered broker-dealer confirmation described in 12 CFR 151.80 or the written notice described in 12 CFR 151.90 within a reasonable time after the customer’s written request.

Conclusions

Objective: To determine, document, and communicate overall findings and conclusions regarding the examination of the bank's activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

1. Determine preliminary examination findings and conclusions and discuss with the EIC. The findings and overall conclusions from this examination should be incorporated into the bank's compliance risk assessment and the management component rating of the bank's CAMELS rating. Consider the following:
 - Expertise and qualifications of staff, including management's knowledge of GSA rules, applicable laws and regulations, and related internal bank policies and procedures.
 - The effectiveness of compliance and audit.
 - Record of compliance and presence of violations. Evaluate the source, nature, and level of exceptions.
 - The existence of conflicts of interest or unsuitable sales practices.
 - The source, nature, and level of customer litigation and complaints.

Note: If there is evidence that the government securities dealer has engaged in any deceptive, dishonest, or unfair practice, examiners should consult with the OCC's Market Risk Division and Securities & Corporate Practices Division to determine whether a referral should be made to the SEC or the OCC should initiate an enforcement action.

2. Discuss examination findings with bank management, including violations, MRAs, recommendations, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.
3. Compose conclusion comments, highlighting any issues that should be included in the ROE. If necessary, compose an MRA comment.
4. Update the OCC's information system and any applicable ROE schedules or tables.
5. Write a memorandum specifically setting out what the OCC should do in the future to effectively supervise government securities dealer activities in the bank, including time periods, staffing, and workdays required.
6. Update, organize, and reference work papers in accordance with OCC policy.
7. Ensure that any paper or electronic media that contain sensitive bank or customer information are appropriately disposed of or secured.

Examination Procedures (Non-Dealer Banks)

This booklet contains expanded procedures for examining specialized activities or specific products or services that warrant extra attention beyond the core assessment contained in the “Community Bank Supervision,” “Large Bank Supervision,” and “Federal Branches and Agencies Supervision” booklets of the *Comptroller’s Handbook*. Examiners determine which expanded procedures to use, if any, during examination planning or after drawing preliminary conclusions during the core assessment.

Note: The following procedures should be performed only in banks that do not have a registered government securities dealer department (non-dealer banks).

Scope

The determination of the scope of this examination should consider work performed by internal and external auditors and other independent risk control functions and by other examiners in related areas. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the following objective. (See appendix A for a sample request letter.)

Objective: To determine the scope of the examination of the bank’s activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities, and identify examination objectives and procedures necessary to meet the needs of the supervisory strategy for the bank.

1. Review the following sources of information and note any previously identified problems related to the bank’s government securities sales activities that require follow-up:
 - Supervisory strategy.
 - EIC scope memorandum.
 - The OCC’s information system.
 - Previous ROEs, related supervisory letters, and work papers.
 - Internal and external audit reports and work papers.
 - Compliance reports and work papers.
 - Bank management’s responses to previous ROEs, supervisory letters, MRAs, and audit reports.
 - Customer complaints and litigation.
2. Obtain and review policies, procedures, and reports bank management uses to supervise the bank’s activities related to the sale of government securities to customers (including repurchase agreement transactions) and the custody of customer government securities.
3. In discussions with bank management, determine whether there have been any significant changes (for example, in policies, processes, personnel, control systems, products,

volumes, markets, and geographies) since the prior examination of the bank's government securities sales activities or custody arrangements.

4. Based on an analysis of information obtained in the previous steps, determine whether the bank's activities require registration as a dealer under the federal securities laws. Examiners requiring legal guidance on what constitutes a potential dealer activity should contact the OCC's Securities & Corporate Practices Division.
5. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, determine the scope and objectives of the examination of the bank's government securities activities.
6. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy.

Functional Areas Procedures

Supervision

Objective: To determine the adequacy of supervision of the bank's activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

1. Assess the adequacy of written policies established by the board of directors or a designated committee. Determine whether the policies address "hold-in-custody" repurchase transactions and custodial holdings of customer securities. Determine whether the board or a designated committee reviews the policies for adequacy at least annually.
2. Determine whether the board or a designated committee ensures that the bank is complying with its policies.
3. Determine whether possible violations of law, rules, and regulations are referred to legal counsel for review and, if so, whether counsel submits written opinions to the board or a committee.
4. Determine whether one or more bank employees have been designated as responsible for supervising the bank's activities related to the sale of government securities to customers (including repurchase agreement transactions) and the custody of customer government securities.
5. Determine whether the bank maintains a written customer complaint file for complaints related to the bank's GSA activities. Determine whether customer complaint follow-up memorandums are prepared, submitted to, and approved by senior managers.
6. Evaluate management's commitment to correcting MRAs cited in ROEs. If MRAs have not been corrected, determine why.
7. Determine whether all violations, possible violations, and deficiencies that have been reported to the board or a designated committee by either the audit or compliance staffs have been corrected or addressed adequately.

Compliance Management

Objective: To determine the adequacy of the bank's compliance management activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

(Compliance management can be performed by the audit department, the compliance department, or both.)

8. Determine whether the bank has a GSA compliance or audit program.
9. Determine whether the program calls for GSA compliance testing and establishes the following criteria:
 - Frequency.
 - Scope.
 - Timing and method for testing new product compliance.
10. Determine whether a person(s) is responsible for compliance with applicable GSA rules, laws, and regulations, and whether that person
 - is independent.
 - is qualified (based on training and experience) to monitor effectively the assigned areas.
 - performs periodic (at least annual) reviews of all government securities activities to determine compliance with applicable GSA requirements.
11. Determine whether the scope of the GSA compliance review is sufficient to review compliance with laws, rules, regulations, and policy restrictions.
12. Determine whether the person responsible for GSA compliance prepares a written compliance report and presents it to the board or designated board committee at least annually.

Customer Protection

Objective: To determine the effectiveness of the bank's processes and controls related to customer protection requirements.

Custody of Customer-Owned Securities (17 CFR 403.5)

13. Determine whether the bank has established adequate written procedures and internal controls to determine, on each business day, the quantity and issue of such securities, if any, that are required to be, but are not, in the bank's possession or control. (See 17 CFR 403.5(c)(2).)
14. Determine whether the procedures address
 - releases of liens, charges, or encumbrances against affected securities.
 - returns of securities loaned.
 - steps to obtain possession or control of securities failed to receive for more than 30 days (more than 60 days in the case of mortgage-backed securities).
 - "buying in" securities as necessary when securities shortages in possession or control cannot be resolved by any of the preceding procedures.

15. If the bank retains custody of securities that are the subject of a repurchase transaction, determine the following:

- Was the transaction conducted pursuant to a written repurchase agreement? (See 17 CFR 403.5(d)(1)(i).)
- Does the repurchase agreement grant the bank the right to substitute securities? If yes, does the bank acknowledge that substitution will not be exercised and indicate this through the sweep disclosure to the customer? (Refer to the “Hold-in-Custody Repurchase Agreements” discussion section in this booklet for the FDIC’s expectations on perfecting a security interest.)
- Did the bank confirm in writing the specific securities that are the subject of the repurchase transaction at the end of the day the transaction was initiated? (See 17 CFR 403.5(d)(1)(ii).)
- Did the confirmation identify the specific securities by issuer, maturity date, coupon rate, par amount, market value, and CUSIP or mortgage pool number of the underlying securities? (See 17 CFR 403.5(d)(2)(i).)
(**Note:** The pooling of securities as collateral for repurchase agreements is not permitted. The frequency or short duration of a particular type of transaction, such as an overnight repurchase agreement or a daily sweep of a customer’s deposits into a hold-in-custody repurchase transaction, does not eliminate the requirement for a bank to send a prompt and accurate confirmation to the customer.)
- Did the bank disclose to the customer in writing that the funds held pursuant to a repurchase agreement are not a deposit, and therefore not insured by the FDIC? (See 17 CFR 403.5(d)(1)(iii).)
- Did the bank maintain possession or control of securities that are the subject of the repurchase agreement? (See 17 CFR 403.5(d)(1)(vi).)

Due Bills (17 CFR 403.5(b))

16. If the bank has accepted customer funds for securities purchases but has not placed the order by the close of the next business day after receipt, determine whether the bank immediately deposits or redeposits the funds in the customer’s account and sends the customer notice of such deposit or redeposit.

17. Determine whether the bank complies with Banking Circular 182 when issuing due bills to customers.

Large Position Reporting (17 CFR 420)

18. Determine whether the bank meets the Treasury Department’s large position reporting threshold (when the bank controls a position of \$2 billion or more in a U.S. Treasury security it meets the threshold). (See 17 CFR 420.2.)

19. Determine whether the bank has procedures in place to comply with the Treasury Department’s calls for large position reports. (See 17 CFR 420.3.)

20. Determine whether the bank has complied with any recent calls by the Treasury Department for large position reports. (See www.treasurydirect.gov.)
21. Determine whether the bank complies with the Treasury Department's large position record-keeping requirements. (See 17 CFR 420.4.)

Customer Holdings Subject to Fiduciary Standards (17 CFR 450.3)

The bank is exempt from the requirements of part 450 if the responses to questions 22 and 23 are yes. If the bank maintains custody of securities that are not subject to examination for compliance with OCC regulation 12 CFR 9 or 12 CFR 150, the bank must comply with part 450.

22. Does the bank exercise fiduciary powers?
23. Determine whether the bank's custodial holdings of government securities
 - are administered pursuant to written policies and procedures that apply all of the applicable fiduciary requirements imposed by OCC regulation 12 CFR 9.13 (national banks) or 12 CFR 150.230-250 (FSAs), including
 - the bank maintains joint custody over the assets held.
 - the assets are kept separate from bank assets.
 - the assets are properly identified as the property of a particular account.
 - are subject to examination by the OCC for compliance with such fiduciary requirements.

Customer-Owned Securities Maintained On-Site (17 CFR 450.4(a)(1))

24. If the bank is not exempt and maintains custody of securities on its premises, determine whether government securities held for customers are segregated from the bank's assets and kept free from liens of any third party or the bank.

Customer-Owned Securities Maintained at a Third Party (17 CFR 450.4(a)(2))

Note: The bank is not required to have a segregated account at a Federal Reserve Bank for customer-owned securities if the securities are segregated in the bank's records.

25. If the bank is not exempt and does not maintain custody of securities on its premises, determine whether the bank maintains customer-owned securities at a third-party depository institution or a Federal Reserve Bank. If so, determine whether
 - the bank has notified the third-party depository institution that such securities are customer-owned securities.
 - the customer-owned securities are maintained in an account that is specifically designated for bank customers that does not contain securities belonging to the bank.

- the bank has instructed the third party to maintain such securities free from liens of the third party or any persons claiming through it, subject to a limited exception if a Federal Reserve Bank retains a lien on securities received during the day that are later determined to be customer securities (see 17 CFR 450.4(a)(3)(ii)).

Confirmation Requirements for Custodial Holdings (17 CFR 450.4(b))

The following confirmation requirements do not apply to a bank that retains custody of securities subject to a repurchase transaction. Confirmation requirements for banks that retain custody of securities subject to a repurchase transaction are addressed in part 403.5(d).

26. Determine whether the bank issues a safekeeping receipt or confirmation for each security held for customers.
27. Determine whether the safekeeping receipt or confirmation identifies
 - issuer.
 - maturity date.
 - par amount.
 - coupon rate.

Record-Keeping Requirements for Custodial Holdings (17 CFR 450.4(c))

28. Determine whether the bank's records of government securities held for customers are kept separate and distinct from other bank records.
29. Determine whether the bank's records
 - identify each customer.
 - identify each government security held for each customer (or the amount of each issue issued in book-entry form).
 - describe the customer's interest in the security.
 - indicate all receipts and deliveries of securities and receipts and disbursements of cash.
 - include a copy of the safekeeping receipt or confirmation issued for each government security held.
30. Determine whether the bank's records provide an adequate basis for an audit of the bank's record-keeping information.

Reconciliation Requirements for Custodial Holdings (17 CFR 450.4(d))

31. Determine whether the bank has established procedures to ensure that government securities held for customers in definitive and book-entry form are counted at least annually and that such counts are reconciled to customer account records. In order to count securities held outside of the bank, such as book-entry securities held at a Federal

Reserve Bank, the bank must reconcile its records with those of the outside custodian (see 17 CFR 450.4(d)(1)).

Note: The regulations require that all government securities held for customers be counted annually. A sample is not acceptable.

32. Determine whether the bank's procedures include verifying securities

- in transfer.
- in transit.
- pledged.
- loaned.
- borrowed.
- deposited.
- failed to receive.
- failed to deliver.
- subject to repurchase agreement.
- subject to reverse repurchase agreement.
- subject to the bank's control or direction, but not in its physical possession for longer than 30 days.

33. Determine whether the bank has developed procedures to document the dates and results of such counts and reconciliations and whether they are adequate.

34. Determine whether differences are noted in a security count difference account not later than seven business days after the date of each required count and verification.

35. Determine whether the bank has established procedures to preserve the reconciliation records for not less than six years, the first two years in an easily accessible place (see 17 CFR 450.4(f)).

Confirmation Requirements (12 CFR 12 and 12 CFR 151)

The record-keeping requirements of 12 CFR 12.3 (for national banks) and 12 CFR 151, subpart A, (for FSAs) do not apply to non-dealer banks effecting fewer than 500 government securities brokerage transactions per year, but non-dealer banks that effect government securities transactions for customers are required to comply with the customer notification requirements of 12 CFR 12.4 (national banks) and 12 CFR 151, subpart B (FSAs).

Customer Notification

36. Determine whether the bank, upon effecting a government securities transaction for a customer, provides the customer either a copy of the broker/dealer confirmation or written notification disclosing the following (see 12 CFR 12.4 for national banks and 12 CFR 151.70-151.90 for FSAs):

- Bank's name.
- Bank's capacity (for example, as agent).
- Customer's name.
- Date of execution.
- Time of execution or a statement that the time of execution will be furnished upon the customer's written request.
- Description, number of shares, and price of securities purchased/sold.
- Name of the registered broker/dealer used, or when there is no registered 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 bank will furnish this information within a reasonable time upon written request from the customer.
- Amount of remuneration the customer provided or is to provide the broker/dealer, directly or indirectly, in connection with the transaction.
- Source and amount of any remuneration received by the bank (from the customer or anyone else) in connection with the transaction, unless the bank and customer have determined remuneration pursuant to a written agreement or the bank received the remuneration in other than an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has received or will receive from a party other than the customer, the written notification must disclose that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer.
- Dollar price at which the transaction was effected and the current yield, yield to maturity, or yield to call.
- Effect that early redemption (if applicable) could have on the yield represented and that additional information is available upon request.
- Non-membership in the Securities Investor Protection Corporation, if that is the case (FSAs only).

Note: A bank effecting securities transactions for customers may elect to use the following notification procedures as an alternative to complying with the notification procedures required by 12 CFR 12.4 for national banks and 12 CFR 151.80 or 151.90 for FSAs (see 12 CFR 12.5 for national banks and 12 CFR 151.100 for FSAs):

- A 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 CFR 12.4 (a) or (b) for national banks and 12 CFR 151.80 or 151.90 for FSAs at no additional cost to the customer.
- A 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. Upon request of the customer, the bank must provide the written notifications pursuant to 12 CFR 12.4(a) or (b) or 12 CFR 151.70.

- A national bank effecting a securities transaction for a periodic plan pursuant to 12 CFR 12.5 shall give or send to its customer, not less than once every three months, a written statement showing
 - the customer’s funds and securities in the custody or possession of the bank.
 - all service charges and commissions paid by the customer in connection with the transaction.
 - all other debits and credits of the customer’s account involved in the transaction.
- An FSA effecting a securities transaction for a periodic plan pursuant to 12 CFR 151.100 shall give or send to its customer, within five business days after the end of each quarterly period, a written statement disclosing
 - each purchase and redemption effected for or with, and each dividend or distribution that was credited to or reinvested for, the customer's account during the period.
 - the date of each transaction.
 - the identity, number, and price of any securities that the customer purchased or redeemed in each transaction.
 - the total number of shares of the securities in the customer's account.
 - any remuneration received or to be received in connection with the transaction.
 - that the FSA will give or send the registered broker-dealer confirmation described in 12 CFR 151.80 or the written notice described in 12 CFR 151.90 within a reasonable time after the customer’s written request.

Conclusions

Objective: To determine, document, and communicate overall findings and conclusions regarding the examination of the bank's activities related to government securities, including repurchase agreement transactions, custodial arrangements, and government securities sales activities.

1. Determine preliminary examination findings and conclusions and discuss with the EIC. The findings and overall conclusions from this examination should be incorporated into the bank's compliance risk assessment and the management component rating of the bank's CAMELS rating. Consider the following:
 - Expertise and qualifications of staff, including management's knowledge of GSA rules, applicable laws and regulations, and related internal bank policies and procedures.
 - The effectiveness of compliance and audit.
 - Record of compliance and presence of violations. Evaluate the source, nature, and level of exceptions.
 - The existence of conflicts of interest or unsuitable sales practices.
 - The source, nature, and level of customer litigation and complaints.
2. Discuss examination findings with bank management, including violations, MRAs, recommendations, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.
3. Compose conclusion comments, highlighting any issues that should be included in the ROE. If necessary, compose an MRA comment.
4. Update the OCC's information system and any applicable ROE schedules or tables.
5. Write a memorandum specifically setting out what the OCC should do in the future to effectively supervise the bank's activities related to the sale of government securities to customers (including repurchase agreement transactions) and the custody of customer government securities, including time periods, staffing, and workdays required.
6. Update, organize, and reference work papers in accordance with OCC policy.
7. Ensure any paper or electronic media that contain sensitive bank or customer information are appropriately disposed of or secured.

Appendixes

Appendix A: Sample Request Letter

Dealer Activities

1. Copies of most recent amendments to Form G-FIN.
2. Copy of the government securities dealer department organization chart (all functional areas).
3. List of all locations where government securities dealer activities are conducted.
4. List of all persons functioning in the capacity of government securities sales associate.
5. Sales production or similar report detailing the sales performance of persons engaged in government securities sales for the most recent fiscal year and current year-to-date.
6. List of the five most active government securities customer accounts and a list of government securities customer accounts opened in the last 12 months.
7. Aged schedule of all government securities held in trading accounts.
8. List of all government securities the bank failed to deliver or failed to receive during the last 12 months.
9. Copies of all written customer complaints the government securities dealer department received since the last examination. Indicate how the complaints were resolved.
10. Copies of all internal audit reports of the government securities dealer department, including internal audit review of GSA compliance and internal controls, and management's response.
11. Copies of the most recent external audit report, including all management letters, reports, or comments pertaining to the bank's government securities dealer activities.
12. Copies of the most recent compliance officer's report, including all management letters and responses, pertaining to the government securities dealer activities.
13. List of all litigation or arbitration proceedings now in process in which the government securities dealer department is involved.
14. List of all persons terminated by the government securities dealer department because of violations of law, rule, regulation, bank or dealer department policy, or disciplinary action resulting from their conduct as securities professionals.

15. Copies of the government securities dealer department earnings report (all profit centers) for the prior fiscal year and current year-to-date.
16. Identify management information systems used in conducting the bank's government securities dealer activities and the purpose of each system.
17. Copies of the bank's "blotter" containing an itemized daily record of all purchases and sales of government securities.
18. Copies of records showing the amount of commissions paid to broker/dealers used to effect government securities transactions.
19. Copies of the most current written policies and procedures adopted to comply with the GSA, 12 CFR 12 (12 CFR 151 for FSAs), and 12 CFR 13.
20. A copy of the bank's customer repurchase agreement.
21. A copy of the bank's customer confirmation for a recent transaction involving a government security.
22. A copy of the bank's most recent reconciliation of government securities held for customers.

Non-Dealer Activities

1. Copies of the most current written policy and procedures adopted to comply with the GSA.
2. Copies of all written customer complaints received since the last examination pertaining to the GSA. Indicate how the complaints were resolved.
3. Copies of all internal audit reports and compliance reports related to GSA compliance and internal controls, and management's response.
4. A copy of the bank's customer repurchase agreement.
5. A copy of a confirmation provided by the bank to a customer for a recent transaction involving a government security.
6. A copy of the bank's most recent reconciliation of government securities held for customers.

Appendix B: Abbreviations

CUSIP	Committee on Uniform Securities Identification Procedures
EIC	examiner-in-charge
FDIC	Federal Deposit Insurance Corporation
FSA	federal savings association
GSA	Government Securities Act of 1986
MRA	matters requiring attention
OCC	Office of the Comptroller of the Currency
OTC	over-the-counter
ROE	report of examination
SEC	U.S. Securities and Exchange Commission

References

Laws

- 15 USC 78, “Securities Exchanges”
- 15 USC 78o-5, “The Government Securities Act of 1986”
- 15 USC 78c, “Definitions and Application”

Regulations

- 12 CFR 9, “Fiduciary Activities of National Banks”
- 12 CFR 12 (national banks) and 12 CFR 151 (FSAs), “Record-Keeping and Confirmation Requirements for Securities Transactions”
- 12 CFR 13, “Government Securities Sales Practices”
- 12 CFR 150, “Fiduciary Powers of Federal Savings Associations”
- 17 CFR 400, “Rules of General Application”
- 17 CFR 403, “Protection of Customer Securities and Balances”
- 17 CFR 404, “Records to Be Made and Preserved”
- 17 CFR 420, “Large Position Reporting”
- 17 CFR 449, “Forms, Section 15C of the Securities Exchange Act of 1934”
- 17 CFR 450, “Custodial Holdings of Government Securities by Depository Institutions”

Comptroller’s Handbook

Examination Process

- “Bank Supervision Process”
- “Community Bank Supervision”
- “Federal Branches and Agencies Supervision”
- “Large Bank Supervision”

Safety and Soundness, Sensitivity to Market Risk

- “Financial Derivatives and Trading Activities”

Securities Compliance

- “Municipal Securities Rulemaking Board Rules”

OCC Issuances

- Advisory Letter 1996-2, “Overnight Hold-In-Custody Repurchase Transactions”
(March 22, 1996)
- Advisory Letter 1996-5, “Forward Repurchase Agreement Transactions” (July 19, 1996)
- Banking Circular 182, “Issuance of ‘Due Bills’ to Customers Purchasing Securities”
(March 27, 1984)
- OCC Bulletin 1993-48, “Department of Treasury Hold-in-Custody Repurchase Transactions”
(August 27, 1993)

- OCC Bulletin 1998-6, “Repurchase Agreements of Depository Institutions With Securities Dealers and Others” (February 19, 1998)
- OCC Bulletin 2010-24, “Interagency Guidance on Sound Incentive Compensation Policies” (June 30, 2010)
- OCC Form G-FIN, “Notice by Financial Institutions of Government Securities Broker or Government Securities Dealer Activities”
- OCC Form G-FINW, “Notice by Financial Institutions of Termination of Activities as a Government Securities Broker or Government Securities Dealer”

Other

- FDIC Financial Institution Letter (FIL-39-2009), “Sweep Account Disclosure Requirements, Frequently Asked Questions” (July 6, 2009)
- SEC “Staff Compliance Guide to Banks on Dealer Statutory Exceptions and Rules,” SEC Division of Trading and Markets (November 7, 2007)
- Treasury Form G-FIN-4, “Disclosure Form for Person Associated With a Financial Institution Government Securities Broker or Dealer”
- Treasury Form G-FIN-5, “Uniform Termination Notice for Person Associated With a Financial Institution Government Securities Broker or Dealer”