

# Rules and Regulations

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## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 344

RIN 3064-AB55

#### Recordkeeping Requirements for Securities Transactions

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Deposit Insurance Corporation (FDIC) is amending its regulation which establishes recordkeeping and confirmation requirements for securities transactions undertaken by an insured state nonmember bank for its customers. The amendment provides the FDIC the express authority to waive the requirements of the regulation for good cause. The purpose of the amendment is to afford the FDIC more flexibility in applying its regulations.

**EFFECTIVE DATE:** The amendment is effective February 7, 1995.

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**SUPPLEMENTARY INFORMATION:** Part 344 generally sets forth the recordkeeping requirements for insured state nonmember banks effecting customer securities transactions whether conducted as discount or full-service brokerage or through the bank's trust department. Part 344 specifies the content and timing of the bank's internal records as well as customer statements and disclosures. An insured state nonmember bank involved in an arrangement with a third party selling

securities on bank premises is generally considered subject to Part 344 if the bank receives transaction-based compensation. Part 344 also requires that banks effecting securities transactions for customers establish written policies and procedures for supervising securities personnel generally and for avoiding conflicts of interest both between the bank and its customers and between customers. The Office of the Comptroller of the Currency (OCC) and the Board of Governors of the Federal Reserve System (Board of Governors) have securities recordkeeping regulations that are virtually identical to Part 344 except that the OCC's regulations have specific waiver authority (12 CFR Part 12 and 12 CFR 208.8(k) respectively).

Recently it has come to the FDIC's attention that some banks are having practical difficulty complying with Part 344 and in particular with § 344.4 which sets forth requirements for the content of confirmations of customers' securities transactions effected by the bank. We understand that this difficulty results from developments in the industry. The practical difficulty in complying with § 344.4 illustrates how developments in the industry as well as changes in industry practice can cause a regulation to be burdensome or make compliance difficult.

The FDIC is generally concerned that to the fullest extent possible its regulations should not impose any undue or unnecessary burden or expense (competitive or otherwise) on insured banks. Having the flexibility to readily tailor the application of a regulation to particular circumstances if warranted furthers that objective. In keeping with that goal the FDIC has therefore determined that it is appropriate to add express waiver authority to Part 344. The addition of the waiver allows an insured state nonmember bank to obtain a waiver of all or any part of Part 344 if the FDIC determines that there is good cause for a waiver to be granted. The adoption of the amendment will enable the FDIC to more readily adapt the application of its regulation to developments in the industry and changes in industry wide practice as well as to unique problems faced by particular institutions. It is the FDIC's intent to provide relief as appropriate taking due care not to undermine the purposes of Part 344.

The amendment is being adopted in final form without opportunity for public comment pursuant to the authority of section 553(b)(A) of the Administrative Procedure Act (5 U.S.C. 553(b)(A)) which authorizes the waiver of notice and public comment in the case of procedural rules. The amendment will be effective immediately upon publication in the **Federal Register**. This action is taken pursuant to the authority of section 553(d) of the Administrative Procedure Act (5 U.S.C. 553(d)) which permits waiver of the 30 day delayed effective date requirement if a rule grants an exemption or relieves a restriction. The amendment is not required by section 302(b) of the Reigle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103-325) to be made effective on the first day of a calendar quarter after the date of publication of the amendment as the amendment does not impose additional reporting, disclosure or other new requirements on insured depository institutions.

#### Paperwork Reduction Act

The final amendment does not create any new recordkeeping, reporting or collection of information requirements within the meaning of the Paperwork Reduction Act (44 U.S.C. 3500 et seq.).

#### List of Subjects in 12 CFR Part 344

Insured banks, Banking, Securities transactions, Recordkeeping, Confirmations.

For the reasons set forth in the preamble, Part 344 of Chapter III of Title 12 is amended as set forth below:

#### PART 344—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

1. The authority citation for Part 344 continues to read as follows:

**Authority:** 12 U.S.C. 1817, 1818, 1819.

2. Section 344.8 is added to read as follows:

#### § 344.8 Waiver.

The Board of Directors of the FDIC, in its discretion, may waive for good cause all or any part of this part 344.

By Order of the Board of Directors.

Dated at Washington, DC, this 31st day of January 1995.