

BILLING CODES: 4810-33-P; 6714-01-P

**DEPARTMENT OF THE TREASURY
Office of the Comptroller of the Currency
12 CFR Parts 12 and 151
[Docket ID OCC-2017-0013]
RIN 1557-AE24**

**FEDERAL DEPOSIT INSURANCE CORPORATION
12 CFR Part 344
RIN 3064-AE64**

SECURITIES TRANSACTION SETTLEMENT CYCLE

AGENCY: Office of the Comptroller of the Currency, Treasury (“OCC”); and Federal Deposit Insurance Corporation (“FDIC”).

ACTION: Final rule.

SUMMARY: The OCC and the FDIC (“Agencies”) are adopting a final rule to shorten the standard settlement cycle for securities purchased or sold by national banks, federal savings associations, and FDIC-supervised institutions. The Agencies’ final rule is consistent with an industry-wide transition to a two business-day settlement cycle, which is designed to reduce settlement exposure and align settlement practices across all market participants.

DATES: This final rule is effective [INSERT FIRST CALENDAR QUARTER DATE FOLLOWING 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

OCC: David Stankiewicz, Special Counsel, Securities and Corporate Practices Division, (202) 649-5510; Daniel Perez, Attorney, Legislative and Regulatory Activities Division, (202) 649-5490 or, for persons who are deaf or hearing-impaired, TTY, (202) 649-5597; or Patricia Dalton, Technical Expert, Asset Management Group, Market Risk, at (202) 649-6360.

FDIC: Thomas F. Lyons, Chief, (202) 898-6850; Michael W. Orange, Senior Trust Examination Specialist, (678) 916-2289, Policy & Program Development, Risk Management Policy Branch, Division of Risk Management Supervision; Annmarie H. Boyd, Counsel, (202) 898-3714; Benjamin J. Klein, Counsel, (202) 898-7027, Bank Activities Unit, Supervision and Legislation Branch, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

On September 5, 2017, the securities industry in the United States transitioned from a standard securities settlement cycle of three business days after the date of the contract, commonly known as “T+3,” to a two-business day standard, or “T+2.” The transition was the culmination of a multi-year securities industry initiative and rule changes implemented by the U.S. Securities and Exchange Commission and securities self-regulatory organizations (such as the Financial Industry Regulatory Authority and the Municipal Securities Rulemaking Board). In connection with the transition to T+2, on June 9, 2017, the OCC issued Bulletin 2017-22, which notified national banks, federal savings associations (“FSAs”), federal branches, and federal agencies (together, “OCC-supervised institutions”) that they should be in compliance with T+2 as of September 5, 2017. The FDIC issued similar guidance applicable to FDIC-supervised institutions¹ through Financial Institution Letter 32-2017 on July 26, 2017.

Regulations governing recordkeeping and confirmation requirements for the securities transactions of national banks and FSAs, both for the bank’s own account and for customers, are

¹ “FDIC-supervised institution” means any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q). 12 CFR 344.3(h). Pursuant to section 3(q), the FDIC is the appropriate Federal banking agency with respect to: (1) any State nonmember insured bank; (2) any foreign bank having an insured branch; and (3) any State savings association. 12 U.S.C. 1813(q)(2).

set out in parts 12 and 151 of the OCC's regulations, respectively. Regulations governing the same for FDIC-supervised institutions are set out in part 344 of the FDIC's regulations. These regulations require that banks generally not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the third business day after the date of the contract, unless otherwise expressly agreed to by the parties at the time of the transaction.

II. Notice of Proposed Rulemaking

On September 11, 2017, the Agencies published in the Federal Register a notice of proposed rulemaking that would amend regulations applicable to OCC-supervised institutions and FDIC-supervised institutions (together, "banks") by aligning those regulations with T+2.² In the notice of proposed rulemaking, the Agencies proposed to amend their respective regulations by directly changing the settlement period applicable to banks from three business days to two. The Agencies also proposed an alternative approach, which would achieve the same immediate result but operate by tying the settlement period applicable to banks to the "standard settlement cycle followed by registered broker dealers in the United States."

The Agencies received three responses to their request for comment. The Investment Company Institute ("ICI") and the Securities Industry and Financial Markets Association ("SIFMA") both "strongly" supported the proposal as a path to aligning the Agencies' regulations with those applicable to other market participants in the United States. A third commenter, an individual, also expressed support for the final rule. Both ICI and SIFMA expressed a preference for the alternative approach. After considering these comments, the Agencies decided to adopt the alternative approach in order to maintain alignment more readily

² 82 FR 42619 (Sep. 11, 2017).

between the settlement period applicable to banks and the standard settlement cycle followed by registered broker dealers in the United States.

III. Description of the Final Rule

The final rule will require banks to settle most securities transactions within the number of business days in the “standard settlement cycle followed by registered broker dealers in the United States” unless otherwise agreed to by the parties at the time of the transaction. Banks will be able to determine the number of business days in the standard settlement cycle followed by registered broker dealers in the United States by referencing SEC Rule 15c6-1, 17 CFR 240.15c6-1(a). Effective September 5, 2017, and as of the date of publication of this final rule, the standard settlement cycle followed by registered broker dealers in the United States is two business days after the date of the contract.

The final rule amends the OCC and FDIC regulations at parts 12, 151, and 344, which govern the recordkeeping and confirmation requirements for bank securities transactions. In order to accommodate the change described above, the Agencies made certain additional, purely editorial changes to the language of these parts. The additional changes were intended to make the regulations easier to follow and understand in light of the revisions necessary to implement the alternative approach.

The effective date for this final rule is [INSERT FIRST CALENDAR QUARTER DATE FOLLOWING 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER.] The Agencies understand that, consistent with the industry’s transition to T+2, banks are already in compliance with a two-day settlement standard as a practical matter.

IV. Regulatory Analysis

Paperwork Reduction Act

Under the Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501–3520, the Agencies may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid Office of Management and Budget (“OMB”) control number. This final rule does not introduce or change any collections of information; therefore, it does not require a submission to OMB. The Agencies invited comment on their PRA determination when issuing the proposed rule, and no responsive comments were received.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (“RFA”), requires an agency, in connection with a final rule, to prepare a Final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (“SBA”) for purposes of the RFA to include banking entities with total assets of \$550 million or less) or to certify that the rule would not have a significant economic impact on a substantial number of small entities.

FDIC: For the reasons described below and pursuant to section 605(b) of the RFA, the FDIC certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

As of December 31, 2017, the FDIC supervises 3,643 depository institutions, of which 2,924 are defined as small banking entities by the terms of the RFA. The transition of the standard settlement cycle to two days will reduce by one day the settlement time of transactions for equities, corporate bonds, municipal bonds, unit investment trusts, mutual funds, exchange-traded funds, exchange-traded products, American depository receipts, options, rights, and warrants. According to recent Call Report data, 2,565 FDIC-supervised small entities reported

holding some volume of equities that are likely to be affected by the new securities settlement cycle, provide custodial banking services, or possess a subsidiary classified as a securities dealer.

The effects on small entities will vary according to the degree of participation in securities transactions. According to recent Call Report data one small entity identified itself as providing custodial banking services, while seven small entities have a subsidiary classified as a securities dealer according to data from the Federal Reserve's National Information Center.

As discussed above, because the industry has already implemented the practice of a standard settlement cycle, currently consisting of two days, and because the final rule does not contain any new recordkeeping, reporting, or compliance requirements, the FDIC anticipates that it will not impose any significant additional costs on FDIC-supervised institutions. Thus, the final rule will not have a substantial impact on any FDIC-supervised small entities. Therefore, the FDIC certifies that the final rule would not have a significant economic impact on a substantial number of FDIC-supervised small entities.

OCC: As of December 31, 2017, the OCC supervised approximately 886 small entities.³ Because the final rule does not contain any new recordkeeping, reporting, or compliance requirements, the OCC anticipates that it will not impose costs on any OCC-supervised institutions. Further, OCC-supervised institutions were required to comply with the substance of the rule before the proposed rule was published in the Federal Register. Thus, the final rule will not have a substantial impact on any OCC-supervised small entities. Therefore, the OCC certifies

³ The OCC calculated the number of small entities using the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are \$550 million and \$38.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), the OCC counted the assets of affiliated financial institutions when determining whether to classify a national bank or federal savings association as a small entity. The OCC used December 31, 2017, to determine size because a "financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See footnote 8 of the SBA's Table of Size Standards.

that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995 Determination

The OCC analyzed the final rule under the factors set forth in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532). Under this analysis, the OCC considered whether the final rule includes a federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (adjusted annually for inflation).

The rule does not impose new mandates. Therefore, the OCC concludes that implementation of the rule will not result in an expenditure of \$100 million or more annually by state, local, and tribal governments, or by the private sector.

Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act (“RCDRIA”) requires that the Agencies, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (“IDIs”), consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. 12 U.S.C. 4802. In addition, in order to provide an adequate transition period, new regulations that impose additional reporting, disclosures, or other new requirements on IDIs generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

The final rule includes no additional reporting, disclosure, or other requirements on IDIs, including small depository institutions, nor on the customers of depository institutions. Therefore, the requirements of RCDRIA do not apply. Nonetheless, the Agencies invited comment on any administrative burdens that the final rule would place on depository institutions, including small depository institutions, and customers of depository institutions. The Agencies did not receive any comments responsive to this issue.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Agencies to use plain language in all proposed and final rules published after January 1, 2000. When issuing a proposed rule, the Agencies invited comment on how to make this rule easier to understand. No comments responsive to this issue were received.

List of Subjects

12 CFR Parts 12 and 151

Banks, Banking, Federal savings associations, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 344

Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

OCC amends 12 CFR parts 12 and 151 and FDIC amends 12 CFR part 344 as follows:

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

**PART 12—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR
SECURITIES TRANSACTIONS**

1. The authority citation for part 12 continues to read as follows:

Authority: 12 U.S.C. 24, 92a, and 93a.

2. Section 12.9 is amended by revising paragraph (a) to read as follows:

§ 12.9 Settlement of securities transactions.

(a) All contracts effected or entered into by a national bank for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) shall provide for completion of the transaction within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States, unless otherwise agreed to by the parties at the time of the transaction. The number of business days in the standard settlement cycle shall be determined by reference to paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1(a).

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**PART 151—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR
SECURITIES TRANSACTIONS**

3. The authority citation for part 151 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

4. Section 151.130 is amended by:

- a. Revising paragraphs (a)(1) and (a)(2);
- b. Redesignating paragraph (a)(3) as (a)(4);

- c. Adding a new paragraph (a)(3); and
- d. Reprinting paragraph (a) introductory text for reader reference.

The revisions are set forth below.

§ 151.130 When must I settle a securities transaction?

(a) You may not effect or enter into a contract for the purchase or sale of a security that provides for payment of funds and delivery of securities later than the latest of:

(1) The number of business days in the standard settlement cycle followed by registered broker dealers in the United States after the date of the contract. The number of business days in the standard settlement cycle shall be determined by reference to paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1(a);

(2) The fourth business day after the contract, if the contract involves the sale for cash of securities that are priced after 4:30 p.m. Eastern Standard Time on the date the securities are priced and are sold by an issuer to an underwriter under a firm commitment underwritten offering registered under the Securities Act of 1933, 15 U.S.C. 77a, et seq., or are sold by you to an initial purchaser participating in the offering;

(3) Such time as the SEC may specify pursuant to an order of exemption in accordance with paragraph (b)(2) of SEC Rule 15c6-1; or

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Federal Deposit Insurance Corporation

**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, and 5412.

2. Section 344.7 is amended by revising paragraph (a) to read as follows:

(a) All contracts effected or entered into by an FDIC-supervised institution that provide for the purchase or sale of a security (other than an exempted security as defined in 15 U.S.C. 78c(a)(12), government security, municipal security, commercial paper, bankers' acceptances, or commercial bills) shall provide for completion of the transaction within the number of business days in the standard settlement cycle followed by registered broker dealers in the United States, unless otherwise agreed to by the parties at the time of the transaction. The number of business days in the standard settlement cycle shall be determined by reference to paragraph (a) of SEC Rule 15c6-1, 17 CFR 240.15c6-1(a).

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[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “SECURITIES TRANSACTION SETTLEMENT CYCLE”]

Dated: May 29, 2018

//s//

Joseph M. Otting

Comptroller of the Currency

[THIS SIGNATURE PAGE RELATES TO THE FINAL RULE TITLED “SECURITIES TRANSACTION SETTLEMENT CYCLE”]

Dated at Washington, D.C. this 31st of May, 2018.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

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Robert E. Feldman,

Executive Secretary.