In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 02–14455 Filed 6–10–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 550 and 551

[No. 2002–22]

RIN 1550–AB49

Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing new regulations specifying the recordkeeping and confirmation requirements for savings associations that effect securities transactions. Under a recent rule issued by the Securities and Exchange Commission (SEC), savings associations may perform certain broker-dealer activities without registering with the SEC. Today's proposal affords savings association customers the same protections and disclosures provided to bank customers; ensures that examiners will be able to evaluate a savings association's compliance with securities laws and to assess whether savings associations effect securities transactions safely and soundly; and provides savings associations with formal guidance for effecting securities transactions.

OTS also is proposing to amend its regulations governing the fiduciary powers of federal savings associations. The proposed amendments codify a series of OTS legal opinions regarding the fiduciary powers of federal savings associations. This action is consistent with the Office of the Comptroller of the Currency's (OCC) recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks. The rule would also streamline application procedures, clarify when a federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and make other minor or technical changes to OTS's fiduciary powers regulations.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: *Mail:* Send comments to Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. 2002–22. Commenters should be aware that there have been some unpredictable and lengthy delays in postal deliveries to the Washington, DC area in recent weeks and may prefer to make their comments via facsimile, e-mail, or hand delivery.

Delivery: Hand deliver comments to the Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9:00 a.m. to 4:00 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Docket No. 2002–22.

Facsimiles: Send facsimile transmissions to FAX Number (202) 906–6518, Attention: Docket No. 2002–22.

E-Mail: Send e-mails to *regs.comments@ots.treas.gov*, Attention: Docket No. 2002–22, and include your name and telephone number.

Availability of comments: OTS will post comments and the related index on the OTS Internet Site at www.ots.treas.gov. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755. (Please identify the materials you would like to inspect to assist us in serving you.) We schedule appointments on business days between 10:00 a.m. and 4:00 p.m. In most cases, appointments will be available the business day after the date we receive a request.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), (202) 906–7170, Regulations and Legislation Division, or Kevin Corcoran, Assistant Chief Counsel, (202) 906–6962, Business Transactions Division, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, (202) 906–5636, Examination Policy Division, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Discussion

A. Recordkeeping and Confirmation Requirements for Securities Transactions

Until recently, savings associations could not effect securities transactions for customers directly unless they registered with the SEC as a broker-dealer. Under an interim final rule issued by the SEC, savings associations are now treated as banks under the definitions of ''broker'' and ''dealer'' in sections 3(a)(4) and (a)(5) of the Securities Exchange Act of 1934 (Exchange Act). 66 FR 27760 (May 18, 2001).[1] As a result, a savings association may perform certain broker-dealer activities without registering with the SEC as broker-dealers.

The OCC, Federal Deposit Insurance Corporation (FDIC), and Federal Reserve Board (FRB) regulations include recordkeeping and confirmation requirements for securities transactions effected by banks. Until the recent SEC rule, OTS did not need similar requirements. Today's proposal affords savings association customers the same protections and disclosures provided to bank customers. Proposed part 551 establishes recordkeeping and confirmation requirements for a savings association that effects securities transactions. Proposed part 551 is based on the recordkeeping and confirmation requirements of the other federal banking agencies.[2] Where appropriate, however, OTS has modified the proposed requirements to reflect SEC regulatory requirements for registered broker-dealers. A section-by-section description of the proposed recordkeeping and confirmation regulations follows.

What Does This Part Do? (Proposed § 551.10)

Proposed § 551.10 states that part 551 establishes recordkeeping and confirmation requirements for a savings association that effects securities transactions for customers. The new part would apply to all savings associations.

Must I Comply With This Part? (Proposed § 551.20)

Proposed § 551.20 sets out the scope of part 551. Generally, any savings

[1] The SEC recently extended until May 12, 2003 the savings association exemption from the definition of ''broker'' under the Exchange Act, and extended until November 12, 2002 the savings association exemption from the definition of ''dealer'' under the Exchange Act. SEC Release No. 34–45897 (May 8, 2002); see also SEC Release No. 34–44570 (July 18, 2001).

[2] See 12 CFR part 12 (2001) (OCC); 12 CFR 208.24 (2001) (FRB); 12 CFR part 344 (2001) (FDIC).

association effecting a securities transaction for a customer must comply with part 551, unless the transaction is specifically excepted.

Proposed § 551.20(b) contains five exceptions to this general rule. Four of the five proposed exceptions—for an institution that effects a small number of securities transactions,[3] for certain government securities transactions, for certain municipal securities transactions, and for transactions conducted at a foreign branch of a savings association—are found in all of the other federal banking regulators' requirements. The OCC and FDIC regulations also include a fifth exception for a transaction effected for a bank by an SEC-registered broker-dealer who provides a confirmation directly to the customer. OTS agrees this is an appropriate exception and has included it in the proposed rule.

This last exception would apply to transactions effected by a savings association employee who also acts as an employee of an SEC-registered broker-dealer (dual employee), if the dual employee works for and is under the control of a registered broker-dealer when he or she effects the transaction. However, if the dual employee works for and is under the control of the savings association when he or she effects the transaction, the proposed exception would not apply.

A savings association may enter into various arrangements with a registered broker-dealer that permit the broker-dealer to operate on the association's premises. As noted above, proposed part 551 generally would not apply to securities transactions executed by these registered broker-dealers for their customers. As registered broker-dealers, they already are subject to the SEC's recordkeeping and confirmation rules. However, if the savings association effects a securities transaction for a customer, but uses the registered broker-dealer to perform purely administrative functions (e.g., clearing the transaction), proposed part 551 would apply because the savings association has executed the transactions.

OTS invites comment on these exceptions and whether they are appropriate in the context of the day-to-day operations of a savings association.

[3] The number in the proposed rule, 500 transactions, is based on the de minimis exception found in § 201 of the Gramm-Leach-Bliley Act, amending the definition of ''broker'' in § 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)(B)(xi)). The other banking agencies' regulations contain a de minimis transaction limit of 250 that predates GLBA.

What Requirements Apply To All Transactions? (Proposed § 551.30)

Proposed § 551.30 states that a savings association must effect all transactions, including excepted transactions, safely and soundly. Specifically, the savings association must maintain effective systems of records and controls that clearly and accurately reflect all appropriate information and provide an adequate basis for an audit. The other federal banking regulators have similar provisions.

What Definitions Apply to This Part? (Proposed § 551.40).

Proposed § 551.30 contains the definitions of terms used in part 551. The proposed definitions of ''asset-backed security,'' ''completion of the transaction,'' ''customer,'' ''debt security,'' ''government security,'' ''municipal security,'' and ''security'' track definitions in the OCC, FDIC, and FRB regulations.

OTS's proposed rule cross-references the definition of ''investment discretion'' in its fiduciary powers rule at 12 CFR 550.40. By contrast, OCC established separate definitions of investment discretion for its recordkeeping and confirmation rule and its fiduciary rule. Although they are phrased slightly differently, the definitions of ''investment discretion'' in OCC's two rules are substantially similar.[4] In OTS's view, the two concepts are identical. As such, OTS has elected to use the same definition for both rules.

The proposed rule also defines ''investment company plan.'' This definition comes from SEC Rule 10b–10, the SEC's rule for confirmation of transactions by registered broker-dealers. See 17 CFR 240.10b–10(d)(6).

OTS, like FDIC, would define ''sweep account'' separately from ''periodic plan.'' Many sweep accounts differ from typical periodic plans such as dividend reinvestment plans and automatic investment plans. Accordingly, proposed § 551.30 includes a definition of ''sweep account'' based on the FDIC's regulation. See 12 CFR 344.3(c). The proposed definition of ''periodic plan'' is based on SEC Rule 10b–10. See 17 CFR 240.10b–10(d)(5). Finally, OTS has included a definition of ''common or collective investment fund,'' which cross-references applicable OTS and OCC rules.

[4] Compare 12 CFR 9.2(i) (which is similar to OTS's definition at 12 CFR 550.40) with 12 CFR 12.2(h) (which is similar to the definitions in the other federal banking regulators' recordkeeping and confirmation regulations).

Subpart A—Recordkeeping Requirements

What Records Must I Maintain for Securities Transactions? (Proposed § 551.50)

Proposed § 551.50 describes the records a savings association must maintain for securities transactions. A savings association effecting securities transactions for customers must maintain, for at least three years, chronological records containing an itemized daily record of each purchase and sale of securities; account records for each customer; the memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities; and a record of all registered broker-dealers the association selected to effect transactions and the commissions paid or allotted to each registered broker-dealer during each calendar year. The savings association must also maintain copies of the written notice required under proposed subpart B, which is discussed below.

How Must I Maintain My Records? (Proposed § 551.60)

Proposed § 551.60(a) states that a savings association may maintain required records in any manner, form, or format, as long as the records clearly and accurately reflect the required information and provide an adequate basis for auditing the information.

Proposed § 551.60(b) is patterned after a recent SEC rule governing recordkeeping requirements by investment companies and investment advisers.[5] Under the proposed rule, a savings association or the person that maintains and preserves records for the association must arrange and index the records in a way that permits easy access and retrieval, separately store a duplicate copy of the records, and promptly provide, upon an examiner's or the association director's request, copies of the record in the medium in which the record is stored, a printout of the record, and means to access, view, and print the record.

Proposed paragraph (b) also addresses electronic records. A savings association would be required to establish procedures to maintain and preserve electronic records in a way that reasonably safeguards the records from loss, alteration, or destruction; to limit access to the records to authorized personnel, the association's directors, and OTS examiners; and to reasonably ensure that electronic copies of the non-

[5] See 17 CFR 270.31a–2(f) and 275.204–2(g).

electronic originals are complete, true, and legible.

Finally, proposed § 551.60(c) states that a savings association may contract with third party service providers to maintain records.

Subpart B—Content and Timing of Notice

What Type of Notice Must I Provide When I Effect a Securities Transaction for a Customer? (Proposed § 551.70)

Under proposed § 551.70, whenever a savings association effects a securities transaction for a customer, the association must notify the customer by providing the customer with: (1) The registered broker-dealer confirmation; (2) a written notice; or (3) an alternate notice for certain types of transactions. These three types of notices are described in proposed §§ 551.80–100.

How Do I Provide a Registered Broker-dealer Confirmation? (Proposed § 551.80)

Under proposed § 551.80, a savings association may elect to provide the customer with a copy of the registered broker-dealer's confirmation. The registered broker-dealer may send the confirmation directly to the customer, or the savings association may send the customer a copy of the confirmation within one day of receiving it from the registered broker-dealer. If the registered broker-dealer sends the confirmation directly to the customer, the savings association would remain responsible for the timely delivery of confirmations and the accurate disclosure of the required information. Proposed § 551.80(b) requires additional disclosures if the association receives remuneration in connection with the transaction. In such a case, the association must provide the customer a statement of the source and amount of any remuneration. This information is generally required in a registered broker-dealer confirmation under SEC Rule 10b–10(a).[6]

How Do I Provide a Written Notice? (Proposed § 551.90)

Under proposed § 551.90, the association may elect to provide a written confirmation disclosing certain information. These informational requirements are based on the SEC's rule on confirmation of transactions by registered broker-dealers, SEC Rule 10b–10.[7] Under proposed § 551.90(a) through (e), the written confirmation must indicate: (1) The savings association's and customer's name; (2) the capacity in which the savings association acted; (3) the date and time the transaction was executed (or a statement that the association will furnish this information upon written request), and the identity, price, and number of shares or units purchased or sold; (4) the person from whom the association purchased or to whom the association sold the security (or a statement that the association will furnish this information upon request); and (5) the amount and source of remuneration the association has received in connection with the transaction. Under proposed § 551.90(g), the association also must include a statement that the association is not a member of the Securities Investor Protection Corporation, if that is the case, unless the transaction involved shares of a registered open-end investment company or unit investment trust. Subparagraphs (f) and (g) are drawn from SEC Rule 10b–10, see 17 CFR 240.10b–10(a)(2)(i)(D) and (a)(9).

Paragraph (h) of proposed § 551.90 imposes additional disclosure requirements on certain transactions in debt securities. These additional requirements, which generally involve disclosing price and yield information about particular types of debt securities, are consistent with the recordkeeping requirements of the other federal banking regulators and SEC Rule 10b–10.[8] OTS has put these additional disclosure requirements in the form of a chart. If a transaction falls within more than one of the types of transactions listed in paragraphs (h)(1) through (5), the savings association must provide the information required for each type.

What Are the Alternate Notice Requirements? (Proposed § 551.100)

Under proposed § 551.100, a savings association may elect to provide alternate notices for certain types of transactions. These include transactions effected: (1) For or with the account of a customer under a periodic plan, sweep account, or investment company plan; (2) for or with the account of a customer in shares in certain open-ended management companies registered under the Investment Company Act of 1940 that hold themselves out as a money market fund and attempt to maintain a stable net asset value per share; (3) for an account for which the savings association does not exercise investment discretion and the customer has agreed in writing to an arrangement concerning the time and content of the notice; (4) for an account, other than common or collective investment funds, for which the savings association exercises investment discretion in other than an agency capacity; (5) for an account for which the savings association exercises investment discretion in an agency capacity; and (6) for a common or collective investment fund.

These categories are based on the alternate notice options provided by the other federal banking regulators and the SEC.[9] Most of the information requirements for all these accounts are based on the other federal banking agencies' rules. The information requirements for periodic plans and sweep accounts, however, are drawn from SEC Rule 10b–10(b), and the requirements for collective or common investment funds are drawn from FDIC regulation 12 CFR 344.6(e). OTS has set out the alternate notice requirements in a chart.

May I Provide a Notice Electronically? (Proposed § 551.110)

Proposed § 551.110 provides that a savings association may satisfy the written notice requirements in subpart B electronically. Proposed § 551.110 is based on a similar regulation in the OCC's rules at 12 CFR 12.102. A savings association may use electronic communications if the parties agree, the parties are able to print or download the notice, the system cannot automatically delete the notice, and both parties are able to receive electronic messages.

May I Charge a Fee for a Notice? (Proposed § 551.120)

OTS has included a provision addressing whether a savings association may charge a fee for a required notice. Proposed § 551.120, which is based on a related OCC provision,[10] states that a savings association may not charge a fee for providing a notice required under proposed subpart B, except in three instances. A savings association may charge a reasonable fee for providing notice under proposed § 551.100(a) (notice for periodic plans, sweep accounts, or investment company plans), (d) (notice for fiduciary accounts), and (e) (notice for agency accounts).

[6] 17 CFR 240.10b–10(a)(2)(i)(C) and (D) (2001).

[7] 17 CFR 240.10b–10(a) (2001).

[8] See, e.g., 12 CFR 12.4(a)(12) (2001); 17 CFR 240.1b–10(a)(4)—(a)(7) (2001).

[9] See 12 CFR 12.5 (OCC); 12 CFR 208.24(d) (FRB); 12 CFR 344.5 (FDIC); 17 CFR 240.10b–10(b) (SEC).

[10] 12 CFR 12.6 (2001).

Subpart C—Settlement of Securities Transactions

When Must I Settle a Securities Transaction? (Proposed § 551.130)

Proposed § 551.130 establishes a settlement period of three days after the date of the transaction (''T+3'') for savings associations effecting securities transactions. This time frame is consistent with that of the other federal banking regulators and mirrors the SEC's T+3 settlement time frame. See SEC Rule 15c6–1, 17 CFR 240.15c6–1 (2001). The proposal also provides that the parties may expressly agree to another time frame at the time of the transaction, or use some other time period as the SEC may specify by rule.

OTS considered incorporating settlement rules by cross-referencing the SEC rule. However, many small institutions may not have access to SEC rules. As a result, OTS has concluded that the better practice is to set forth a settlement rule tracking the SEC rule. This is consistent with the OCC and FDIC rules.

Subpart D—Securities Trading Policies and Procedures

What Policies and Procedures Must I Maintain and Follow for Securities Transactions? (Proposed § 551.140)

Proposed § 551.140 requires a savings association that effects securities transactions to maintain and follow written policies and procedures addressing several areas of operation. This section is based on similar provisions in the other banking regulators' recordkeeping regulations.

Under the proposed rule, the association's policies and procedures must:

- Assign responsibility for the supervision of officers and employees engaged in various aspects of the trading process;
- Provide for the fair and equitable allocation of securities and prices to accounts when the savings association receives orders for the same security at approximately the same time and it places orders individually or in combination;
- Provide for the crossing of buy and sell orders on a fair and equitable basis; and
- Require certain officers and employees to make quarterly reports containing specific information on personal securities transactions.

Proposed § 551.140(d) describes who must file the quarterly reports and is similar to the reporting requirements of the other regulators. Under that paragraph, an officer or employee must file a report if he or she makes investment recommendations or decisions for the accounts of customers, participates in the determination of these recommendations or decisions, or, in connection with his or her duties, obtains information concerning which securities the savings association intends to purchase, sell, or recommend for purchase or sale. OTS has also relied on the SEC's reporting requirements for investment company personnel who engage in personal investment activities found at 17 CFR 270.17j–1(d).

How Do My Officers and Employees File Reports of Personal Securities Trading Transactions? (Proposed § 551.150)

Proposed § 551.150(a) details the contents of the quarterly report. For each transaction, an officer or employee described in proposed § 551.140(d) would be required to report: (1) The date of the transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security; (2) the nature of the transaction (i.e., purchase, sale, or other type of acquisition or disposition); (3) the price at which the transaction was effected; (4) the name of the broker, dealer, or other intermediary effecting the transaction; and (5) the date the officer or employee submitted the report. The report is due within ten days after the close of the calendar quarter.

The officer or employee would not be required to report: (1) A transaction if he or she has no direct or indirect influence or control over the account or over the securities held in the account; (2) a transaction in shares issued by an open-end investment company registered under the Investment Company Act of 1940; (3) a transaction in direct obligations of the United States government; or (4) a transaction in bankers' acceptances, bank certificates of deposit, commercial paper and high quality short term debt instruments, including repurchase agreements. In addition, the officer or employee would not be required to file a report if the aggregate amount of his or her purchases and sales is $10,000 or less during the calendar quarter.

When a savings association acts as an investment advisor to an investment company, paragraph (c) would permit an officer or employee to fulfill the filing requirement by filing the report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d). SEC Rule 17j–1 applies whenever a savings association acts as an investment adviser to an investment company. Proposed part 551, by contrast, applies more broadly to the investment advisory activities of a savings association, whether the association provides the advice to an investment company or to any other customer. Savings associations should be aware when they may be conducting advisory activities that would subject them to both SEC and OTS reporting requirements. OTS specifically requests comment whether the rule should specifically address this point.

B. Fiduciary Powers of Federal Savings Associations (Part 550)

OTS also proposes amendments to its regulations governing the fiduciary powers of federal savings associations at 12 CFR part 550. The proposed rules codify a series of OTS legal opinions regarding the fiduciary powers of federal savings associations. This action also is consistent with the OCC's recent codification of a similar series of legal opinions regarding the fiduciary powers of national banks.[11] The rule would also streamline application procedures, clarify when a federal savings association may act in a fiduciary capacity without obtaining fiduciary powers from OTS, and make other minor or technical changes. These changes are discussed below.

1. Fiduciary Operations (Proposed §§ 550.130 and 550.135)

a. Scope of Fiduciary Powers (Proposed § 550.135(a))

A federal savings association's authority to exercise fiduciary powers derives from section 5(n) of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464(n)). Section 5(n)(1) of the HOLA states that OTS may authorize a federal savings association:

> To act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which State banks, trust companies, or other corporations that compete with Federal savings associations are permitted to act under the laws of the State in which the Federal savings association is located.

Thus, under the HOLA, the scope of a federal savings association's fiduciary powers is expressly tied to the laws of the state in which the federal association is ''located.'' That location determines which state laws define the permissible scope of a federal savings association's fiduciary powers.

There is no case law specifically discussing the meaning of ''located'' in section 5(n). However, OTS has provided guidance regarding this term in a series of legal opinions.[12] OTS has opined that a federal savings association

[11] See 66 FR 34792 (July 2, 2001).

[12] See, e.g., OTS Op. Chief Counsel (June 13, 1994); OTS Op. Chief Counsel (June 21, 1996); and OTS Op. Chief Counsel (August 8, 1996).

will be located for trust purposes in those states where it has an office in which it conducts fiduciary activities. OTS has indicated that a trust office may be in the form of a brick and mortar office or a fiduciary presence in the state that is the functional equivalent of operating a brick and mortar trust office—a so-called de facto trust office. To determine whether an association is operating an actual or de facto trust office in a particular state, OTS has looked at the nature of activities performed in the state. OTS has distinguished between fiduciary activities (such as executing documents, providing investment advice, making investments, and approving new accounts), which would establish location for trust purposes, and mere marketing activities, which would not. For example, OTS has concluded that a federal savings association is not located where its only activities are marketing its fiduciary services and performing specified incidental duties pursuant to its appointment as testamentary trustee or trustee holding real estate.

OTS has incorporated these interpretations in today's proposed rule. For the purposes of section 5(n), the proposed rule interprets ''location'' as the state in which a federal savings association ''conducts fiduciary activities.'' Specifically, proposed § 550.135(a) provides that the state laws that apply to federal savings associations under section 5(n) of the HOLA are the laws of the state in which the association conducts fiduciary activities.[13] For each individual state, the proposed rule would state that a federal savings association may conduct fiduciary activities in the four fiduciary capacities specifically authorized by the HOLA (trustee, executor, administrator, or guardian), and in any other fiduciary capacity the state permits for state banks, trust companies, or other corporations that compete with federal savings associations in that state. Consistent with OTS opinions, the proposed rule indicates that a federal savings association conducts fiduciary activities where it accepts a fiduciary appointment, executes documents accepting a fiduciary appointment, provides investment advice regarding fiduciary assets, or makes discretionary decisions regarding investment or distribution of fiduciary assets. See proposed § 550.60.

The proposed rule also provides that for each fiduciary relationship, the state referred to in section 5(n) of the HOLA is the state(s) in which the federal savings association conducts fiduciary activities for that relationship. We have not included a provision similar to that of the OCC, providing that if the federal savings association acts in a fiduciary capacity for a particular relationship in more than one state, the association may designate in which state the association is acting in a fiduciary capacity.[14] Many commenters on the OCC's rule expressed concern that the provision might implicate state choice of law issues. We invite specific comment on whether such a provision is necessary and within the scope of section 5(n) of the HOLA.

b. Multi-State Operations (Proposed § 550.130)

OTS legal interpretations have also analyzed the extent to which a federal savings association may conduct multi-state fiduciary activities, market services to customers in multiple states, and establish offices in multiple states. These opinions have concluded that the HOLA places no geographic limitation on the ability of a federal savings association to exercise fiduciary authority on a multi-state basis.[15] Proposed § 550.130(a) codifies these opinions and provides that a federal savings association may conduct fiduciary activities in any state.[16]

As noted above, OTS has determined that a federal savings association is not located for trust purposes in a state where it only conducts activities ancillary to its fiduciary business.[17] Accordingly, proposed § 550.130(b) clarifies that when a federal savings association conducts fiduciary activities in one state, it may market its fiduciary services to, and act as a fiduciary for, customers located in any state, and may act as a fiduciary for relationships that include property located in other states, or as a testamentary trustee for a testator located in another state. In conducting these ancillary activities, the federal savings association must generally comply with the laws of the state in which it is located.[18]

The proposed rule further provides that a federal savings association may establish or utilize an office in another state to provide ancillary services.[19] Proposed § 550.60 describes examples of ancillary activities drawn from recent interpretive opinions. These activities would include advertising, marketing, soliciting fiduciary business, answering questions and providing information to customers related to their accounts, acting as liaison between the association and the customer (such as forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property.[20] If a federal savings association, however, also conducts fiduciary activities in a state, it would be located in that state.

c. Impact of Federal Law (Proposed § 550.135(b))

The fiduciary operations of federal savings associations are subject to a complex interplay between federal and state law. As noted above, section 5(n) of the HOLA indicates that OTS must look to state law to determine the scope of the fiduciary powers that may be granted to a federal savings association.[21] The HOLA, however, also grants OTS plenary authority to regulate all aspects of the operations of federal savings associations, including fiduciary operations (12 U.S.C. 1464(a)), and expressly confers upon OTS the power to authorize federal savings associations to exercise fiduciary powers (12 U.S.C. 1464(n)).

OTS has issued a number of opinions addressing the interaction of these provisions. Specifically, OTS has opined that a federal savings association with OTS-authorized fiduciary powers does not need to obtain a license or permission from a state in order to conduct fiduciary activities in that state.[22] Further, consistent with its role as exclusive regulator of federal savings

[13] As a related technical change, the proposed rule deletes the second sentence of current § 550.20. That sentence provides that the scope of permissible fiduciary powers for federal savings associations depends on the powers that the state in which the association is located grants to competing fiduciaries in that state. OTS believes that this sentence is unnecessary in light of proposed § 550.135(a).

[14] See 12 CFR 9.7(d). In all other respects, proposed §§ 550.130 and 550.135 are consistent with the OCC rule at 12 CFR 9.7.

[15] OTS Op. Chief Counsel (March 28, 1996).

[16] A federal savings association would be required to comply with the applicable application and notice procedures described at section I.B.3 of this preamble.

[17] OTS Op. Chief Counsel (June 13, 1994); and OTS Op. Chief Counsel (June 21, 1996).

[18] See proposed § 550.135(b).

[19] OTS Op. Chief Counsel (May 5, 1995) at n.13.

[20] OTS Op. Chief Counsel (June 13, 1994); OTS Op. Chief Counsel (June 21, 1996); OTS Chief Counsel (August 8, 1996); and OTS Op. Chief Counsel (July 1, 1998).

[21] Section 5(n) of the HOLA also specifically incorporates certain other state laws. For example, OTS may not grant fiduciary powers to a federal savings association if it has less capital than state law requires for state chartered fiduciaries. 12 U.S.C. 1464(n)(8). Moreover, a federal savings association must comply with any state law requiring a deposit of securities or an oath or affidavit from fiduciaries. 12 U.S.C. 1464(n)(5) and (n)(6).

[22] See, e.g., OTS Op. Chief Counsel (March 28, 1996).

associations, OTS has issued detailed fiduciary regulations at part 550.

Other than with respect to those state laws specifically referenced in HOLA § 5(n), the fiduciary activities of federal savings associations are governed solely by federal law and OTS. This position is consistent with the oft-stated principle that OTS totally occupies the field of the regulation of federal savings associations.[23] Under this approach, a state law purporting, for example, to restrict the advertising or affect the recordkeeping practices of a federal savings association's fiduciary operations, would not apply to the association.

Accordingly, proposed § 550.135(b) states that, except for those particular state laws that apply to a federal savings association by virtue of section 5(n) of the HOLA, state laws that purport to regulate any other aspect of a federal savings association's fiduciary activities do not apply to a federal savings association's fiduciary operations.

2. Application and Notice Requirements (Proposed §§ 550.70 and 550.125)

In this rulemaking, OTS also proposes to revise the application and notice requirements applicable to fiduciary operations. Under existing rules, a federal savings association must obtain prior approval from the OTS before exercising fiduciary powers, unless its activities are exempt under subpart E. 12 CFR 550.70. Under current § 550.130, a federal savings association may exercise only those fiduciary powers specified in the OTS approval. In addition, unless otherwise provided in the approval, a federal savings association may exercise fiduciary powers only from those offices listed in the application.[24] As a result, if a federal savings association wishes to exercise fiduciary powers that are not specified in the OTS approval or exercise fiduciary powers from a new office, the federal savings association must generally seek additional OTS review.

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise. See 12 CFR 550.100. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations.

Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. A federal savings association would engage in materially different activities, for example, if the business plan supporting the approved trust application contemplated only personal trust services and the savings association proposed to expand its activities to manage employee benefit accounts.

When a federal savings association conducts fiduciary activities that differ materially from previously approved fiduciary activities, OTS believes that its review of a complete trust application is necessary to ensure that the proposed operations are consistent with the association's experience, resources, and expertise. Accordingly, the proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application.

OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities. However, to ensure that OTS is adequately informed when an association expands the geographic scope of its activities into a new jurisdiction, the proposed rule would require a federal savings association to notify the OTS within ten days after commencing such fiduciary activities in a new state.[25] A federal savings association would *not* be required to notify OTS, however, to move previously approved activities within a state. Similarly, no notice is required if the activities in a new state will consist only of activities ancillary to the exercise of the association's fiduciary business.

OTS has incorporated the application and notice requirements in a chart at proposed § 550.70. OTS would also make other technical revisions to existing part 550 to reflect the described changes.

3. Deposit of Fiduciary Funds Awaiting Investment or Distribution (Proposed § 550.310)

Existing § 550.300 permits a federal savings association to deposit funds of a fiduciary account that are awaiting investment or distribution in self-deposits or in deposits with an affiliate. If the FDIC does not insure the entire amount of the self-deposit or the affiliate deposit, the association must set aside collateral as security. 12 CFR 550.310.

OCC has a similar rule at 12 CFR 9.10. OCC's rule, however, states that if the FDIC does not insure the funds deposited with the institution, the bank must set aside collateral as security for a self-deposit, but may set aside collateral for the deposit with an affiliate. The OCC has interpreted this section to mean that the collateral for fiduciary funds deposited with an affiliate may come from either the bank or its affiliate.[26]

When it revised § 550.310 in 1997, OTS clearly expressed its intent to conform the substance of its rules to the OCC's rules. *See* 62 FR 39477 (July 23, 1997). Accordingly, OTS proposes to amend its rules to state that if FDIC does not insure the entire amount of an affiliate deposit, either the savings association or the affiliate must set aside collateral as security.

4. Activities Exempt From Part 550 (Proposed § 550.580)

Existing § 550.580 describes when a federal savings association may conduct fiduciary activities without obtaining fiduciary powers from OTS. The purpose of this section is to exempt those fiduciary relationships authorized in section 5(l) of the HOLA, 12 U.S.C. 1464(l). Section 5(l) states:

A Federal savings association is authorized to act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan which qualifies or qualified for specific tax treatment under section 401(d) of [the Internal Revenue Code], and as trustee

[23] See, e.g., 12 CFR 560.2 (2002); see also Fidelity Federal Savings and Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982).

[24] When OTS adopted this provision in 1997, it noted that a federal savings association did not need to file a new application every time it opens a new office. For example, OTS approval of an application to obtain fiduciary powers could establish a procedure for expansion into new states under a notice process. See 62 FR at 67699.

[25] Proposed § 550.125 sets out the requirements for this notice. Specifically, the savings association would be required to identify each new state, describe the fiduciary activities the association is or will be conducting in each new state, and provide sufficient information to support a conclusion that the activities are permissible in each new state. Sufficient information to support a conclusion that the activities are permissible in the new state will depend on the specific circumstances of each case. Where state law is clear and the proposed activities are straightforward, a more limited discussion may suffice. A complicated business plan in a state with unclear law may require an opinion of counsel.

[26] OCC Interpretive Letter # 699, dated November 6, 1995.

or custodian of an individual retirement account within the meaning of section 408 of [the Internal Revenue Code] if the funds of such trust or account are invested only in savings accounts or deposits in such Federal savings association or in obligations or securities issued by such Federal savings association.

These types of accounts are addressed under existing §§ 550.580(a) and (b).

Existing § 550.580(c), however, also exempts a federal savings association when it acts as trustee of a fiduciary account that involves no active fiduciary duties, provided that applicable law authorizes the savings association to act in that capacity. Several associations have attempted to rely on paragraph (c) to argue they do not need to obtain fiduciary powers when acting as a directed trustee for non-IRA accounts. Since these activities are beyond the scope of section 5(l) of the HOLA, OTS is proposing to delete § 550.580(c).

OTS also proposes to amend § 550.580 to clarify that a federal savings association conducting fiduciary activities in an exempt capacity may only invest the funds in the trust or account in the investments described in § 550.600. Finally, the proposal includes additional clarifying amendments to this section and § 550.600.

II. Solicitation of Comments Regarding the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires federal banking agencies to use ''plain language'' in all proposed and final rules published after January 1, 2000. OTS invites your comments on how to make this proposed rule easier to understand. For example:

Did we organize the material to suit your needs? For example, several of the proposed rules set out requirements in a chart, rather than in standard regulation text. See proposed §§ 550.70, 551.90 and 551.100. OTS specifically requests comment whether these charts are clearer and more helpful. If not, how could the material be better organized?

Do we clearly state the requirements in the rule? If not, how could the rule be more clearly stated?

Does the rule contain technical language or jargon that is not clear? If so, what language requires clarification?

Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

Would more (but shorter) sections be better? If so, what sections should be changed?

What else could we do to make the rule easier to understand?

III. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' 5 U.S.C. 603(a). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

OTS has prepared an IRFA for part 551 but not for part 550. Most of the proposed changes to part 550 merely codify OTS existing regulatory interpretations regarding the scope of fiduciary powers, multi-state operations, and the impact of federal law. To the extent that proposed part 550 modifies existing requirements, the proposed rule would reduce burden by eliminating application requirements under certain circumstances, by substituting notices for applications in other circumstances, and by providing greater flexibility regarding the collateralization of deposits of fiduciary funds. The rule would also clarify the scope of activities that are exempt from part 550 under section 5(*l*) of the HOLA. While the proposed rule would eliminate § 550.580(c), which exempts federal savings associations that act as trustees of fiduciary accounts that involve no active fiduciary duties, OTS is not aware of any small federal savings associations that rely on this provision. Accordingly, OTS certifies to the Chief Counsel of Advocacy of the Small Business Administration that the proposed changes to part 550 will not have a significant economic impact on a substantial number of small entities.

Because the recordkeeping and confirmation requirements are new for savings associations, OTS cannot determine whether the proposed addition of part 551 will have a significant impact on a substantial number of small entities. However, we have consulted supporting statements filed by the OCC for substantially identical requirements in connection with a 1999 submission under the Paperwork Reduction Act. Because savings associations are now considered ''banks'' for purposes of the broker-dealer registration requirements and because OTS has modeled the proposed rule on the OCC's recordkeeping and confirmation rules, OTS believes that OCC's estimated annual paperwork cost of complying with the regulations provides a reasonable starting point for OTS's analysis of the cost to small business entities to comply with the proposed rule. These estimates are discussed under section B—Requirements of the proposed rule.

A description of the reasons why OTS is considering this action, and a statement of the objectives of, and legal basis for, proposed part 551 are included in the supplementary material above.

A. Small Entities to Which the Proposed Rule Would Apply

Proposed part 551 would apply to savings associations that effect securities transactions for customers. OTS calculates that as of April 26, 2002, it regulates approximately 1,009 savings associations. Of these savings associations approximately 557 savings associations hold assets under $150 million. Small depository institutions are generally defined, for RFA purposes, as those with assets under $150 million.

In all likelihood, however, this number substantially overstates the number of small savings associations that may be effected by the rule. No savings associations are currently registered with the SEC as broker-dealers, although some provide such services to their customers through arrangements with a third party broker-dealer. Because the new SEC rule permitting savings associations to perform broker-dealer activities without registering is so recent, OTS has no information concerning how many of its savings associations, large or small, have commenced or are contemplating commencing these operations. Accordingly, OTS specifically seeks comment on the number and size of small savings associations that may be affected by this rule.

B. Requirements of the Proposed Rule

As described more fully in the supplementary information section, the proposed rule would require savings associations to retain records of securities transactions, send confirmation of the transactions to customers, settle securities transactions within certain timeframes, and establish and maintain specific written policies and procedures regarding securities transactions.

Subpart A of the proposed rule establishes the minimum recordkeeping requirements for savings associations concerning securities transactions with their customers. This provision requires that the savings association maintain essential records necessary to track securities transactions. This type of recordkeeping is a usual and customary

process for a savings association. Consequently, most savings associations should be partially or fully prepared to meet the recordkeeping requirements. While we believe that this requirement should not impose significant burdens, savings associations may incur additional personnel (managerial, computer, and support staff), data storage, and other costs to the extent that existing resources are insufficient.

Subpart B would establish requirements for confirmation notices and subpart C would address the timing of settlement for securities transactions. To the extent that existing practices and available resources are insufficient, savings associations may need the assistance of legal and securities professionals and other personnel (managerial, computer, and support staff) to ensure that notices meet the content requirements and are provided within the time frames set forth in the regulation, and to ensure that securities transactions close within the times specified in the rule.

Finally, subpart D would require the savings association to establish and follow various policies and procedures to govern securities transactions. Savings associations commonly develop and implement policies and procedures in many of the areas addressed by the proposed rules (for example, the assignment of responsibility for the oversight of personnel). Accordingly, most savings associations should be partially prepared to meet these requirements. However, the development of policies and procedures on matters specific to securities transactions may require the assistance of legal and securities professionals. Compliance with these policies and procedures may require additional personal, training, and other costs.

Based on OCC estimates, OTS calculates that this rule will impose at least $264 in additional costs on small savings associations that begin to effect securities transactions on behalf of customers.[27] The development of policies and procedures, however, may require the assistance of legal or securities professionals which were not included in OCC's estimate. Accordingly, OTS has included additional costs of $305 to $403 to reflect the efforts of these professionals.[28] Accordingly, OTS estimates that the total cost of complying with this rule will be $569 to $667 per small institution. OTS notes that these costs will drop in subsequent years because thrifts will not be required to develop, and will only be required to update, policies and procedures on effecting securities transactions.

OTS solicits comment on its estimates of the costs of the potential burdens and on ways to minimize burden.

C. Significant Alternatives

Section 603(c) of the RFA requires OTS to describe any significant alternatives to the proposed rule that accomplish the stated objectives of the rule while minimizing any significant economic impact of the rule on small entities. Section 603(c) lists several examples of significant alternatives, including: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements for small entities; (3) using performance standards rather than design standards; and (4) excepting small entities from coverage of the rule or a part of the rule.

OTS considered recommending, rather than requiring, recordkeeping and confirmation provisions regarding securities transactions conducted by savings associations, but decided that such an approach was inappropriate. The SEC and the other federal banking regulators have created a regulatory scheme designed to protect investors through adequate disclosure of information and to discourage and detect fraudulent securities practices through prudent recordkeeping requirements. OTS believes that similar provisions are necessary to bring the savings association industry into conformity with the standards of the securities and banking industries for effecting securities transactions.

OTS, however, has attempted to minimize the economic impact of the proposed rules on savings associations, including small savings associations, while still achieving the overall objectives of the regulation. OTS has included several exemptions to the rule that may be available to small savings associations. For example, proposed § 551.20(b)(1) exempts savings associations from certain recordkeeping and policy and procedure requirements if the institution conducts fewer than 500 securities transactions for customers (excluding transactions in government securities). Similarly, proposed § 551.20(b)(2) exempts savings associations who conduct fewer than 500 government securities transactions from certain recordkeeping requirements. OTS believes that many small associations will take advantage of these exemptions. Moreover, OTS continues to have the ability under 12 CFR 500.30(a) to waive any recordkeeping or confirmation requirements upon a finding of good cause. This provision permits OTS to minimize any significant economic impact of a provision on a specific institution on a case-by-case basis.

Finally, OTS has included a substantial amount of flexibility in the rule. For example, a savings association may maintain required records in any manner, form, or format that it deems appropriate. Further, the rules would specifically permit the use of electronic storage media and the provision of notices through electronic means. *See* proposed §§ 551.60 and 551.110. In addition, several provisions permit a savings association, through the agreement with the customer, to modify the requirements of the part.

OTS requests comment on the burdens associated with the proposed rule and whether any further exceptions for small institutions would be appropriate.

D. Other Matters

There are no federal rules or statutes that duplicate, overlap, or conflict with the proposed rule. However, as noted above, the SEC and the other banking regulators have adopted substantially similar recordkeeping and confirmation requirements for broker-dealers and other depository institutions.

OTS invites comments on the burdens associated with the proposed rule that affect small savings associations, and whether any modifications or exemptions from the rules for small savings associations would be appropriate.

IV. Paperwork Reduction Act

OTS has a continuing interest in the public's opinion of our collections of information. OTS welcomes any comments on the collection requirements in the proposal. OTS specifically invites comment on:

(1) Whether the proposed collection of information contained in this notice

[27] OCC estimated that banks would incur 11 hours of additional burden in their first year and an additional 4 hours thereafter. It further estimated that 80 percent of the burden would be clerical at a cost of $20 per hour and that 20 percent of the burden would be managerial at $40 per hour. Thus, the average annual cost of each hour is $24.

[28] The average billing rate for a partner in a United States law firm with less than nine lawyers is $183 per hour. The average billing rate for an associate in such a firm is $139 per hour. 1999 Survey of Law Firm Economics, Altman Weil Pensa Publications, Inc., reported at *www.lawyers.com*. Using OCC's estimate that the rule imposes a maximum of 2.2 managerial burden hours, OTS estimates that these costs will be between $305 and $403.

of proposed rulemaking is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Respondents/recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number. The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Send comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Alexander T. Hunt, Washington, DC 20503, or e-mail to *ahunt@omb.eop.gov*, with copies to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, or e-mail to *infocollection.comments@ots.treas.gov.*

The collection of information requirements regarding fiduciary activities in this proposed rule are found in § 550.125. OTS requires the information called for under § 550.125 in order to know when a federal savings association is acting in a fiduciary capacity in a new state or conducting fiduciary activities that differ from those that OTS has already approved. Under a paperwork submission OTS filed in 2001 (OMB Control No. 1550–0037), OTS has estimated that 10 respondents file trust powers applications annually and spend approximately 9 hours compiling the application. Although the number of respondents should not change under the proposal, the hours needed to file the streamlined notice required in § 550.125 should be significantly less than the time needed to file a complete trust powers application. Substituting the notice requirement for a complete application should decrease the burden hours from 9 to approximately 3, resulting in a decrease in burden hours from 90 to 30.

OTS requires the information called for under §§ 551.50, 551.70–.100, 551.140, and 551.150 of the proposal to establish an audit trail. OTS uses this audit trail in its regulatory examinations as a tool to evaluate a savings association's compliance with banking and securities laws and regulations, such as the anti-fraud provisions of the federal securities laws. Further, the records provide a basis for adequate disclosure to customers who effect securities transactions through savings associations.

Under 12 U.S.C. 1464(n), OTS has supervisory responsibility for the fiduciary powers of federal savings associations. Further, under 12 U.S.C. 1463(a) and 12 U.S.C. 1464(a), the Director of OTS may prescribe rules and regulations to carry out its responsibility to provide for the operation and regulation of savings associations. The proposed recordkeeping and confirmation rules are necessary for OTS to effectively carry out its statutory responsibilities.

In estimating the potential number of respondents, OTS has used the number of OTS-supervised savings associations as of April 26, 2002. That number is 1009. Our estimate of the burden hours for respondents is based on the OCC's and FDIC's paperwork discussions in their final rules published in 1995 and 1996, respectively, as well as those agencies' updates of their paperwork analyses in 1999.

The recordkeepers/respondents are federal and state savings associations.

Estimated number of recordkeepers and/or respondents: 1009.

Estimated average annual burden hours per recordkeeper/respondent: 11.

Estimated total annual recordkeeping burden: 11,099 hours.

As noted, many savings associations contract with third-party registered broker-dealers to effect securities transactions. Moreover, at the request of OTS trust examiners, many federal savings associations with trust departments have been keeping records similar to those required by the proposal on recordkeeping and confirmation requirements. Accordingly, OTS anticipates that the start up costs to savings associations of the recordkeeping and confirmation requirements will be minimal. Records under part 551 are to be maintained for at least three years.

V. Unfunded Mandates Act

OTS has determined that the proposed rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Executive Order 12866

OTS has determined that the proposed rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects

12 CFR Part 550

Accounting, Reporting and recordkeeping requirements, Savings associations, Trusts and trustees.

12 CFR Part 551

Reporting and recordkeeping requirements, Savings associations, Securities, Trusts and trustees.

Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

2. Section 550.20 is revised to read as follows:

§ 550.20 What are fiduciary powers?

Fiduciary powers are the authority that the OTS permits you to exercise under 12 U.S.C. 1464(n).

3. Section 550.60 is amended by adding definitions of the phrases ''activities ancillary to your fiduciary business'' and ''fiduciary activities'' in alphabetical order, to read as follows:

§ 550.60 What other definitions apply to this part?

Activities ancillary to your fiduciary business include advertising, marketing, or soliciting fiduciary business, contacting existing or potential customers, answering questions and providing information to customers related to their accounts, acting as liaison between you and your customer (for example, forwarding requests for distribution, changes in investment objectives, forms, or funds received from the customer), and inspecting or maintaining custody of fiduciary assets or holding title to real property.

* * * * *

Fiduciary activities include accepting a fiduciary appointment, executing fiduciary-related documents, providing investment advice for a fee regarding fiduciary assets, or making discretionary decisions regarding investment or distribution of assets.

* * * * *

4. Section 550.70 is revised to read as follows:

§ 550.70 Must I obtain OTS approval or file a notice before I exercise fiduciary powers?

You should refer to the following chart to determine if you must obtain OTS approval or file a notice with OTS before you exercise fiduciary powers. This chart does not apply to activities that are exempt under subpart E of this part.

If you will conduct. . .	Then. . .
(a) Fiduciary activities for the first time	You must obtain prior approval from OTS under §§ 550.80–550.120 before you conduct the activities.
(b) Fiduciary activities that are materially different from the activities that OTS has previously approved for you.	You must obtain prior approval from OTS under §§ 550.80–550.120 before you conduct the activities.
(c) Fiduciary activities that are not materially different from the activities that OTS has previously approved for you.	You must file a written notice described at § 550.125 if you commence the activities in a new State. You do not need to file a written notice if you commence the activities at a new location in a State where you already conduct these activities.
(d) Activities that are ancillary to your fiduciary business	You do not have to obtain prior OTS approval or file a notice with OTS.

5. A new section 550.125 is added to subpart A to read as follows.

§ 550.125 How do I file the notice under § 550.70(c)?

(a) If you are required to file a notice under § 550.70(c), within ten days after you commence the fiduciary activities in a new State, you must file a written notice that identifies each new State in which you conduct or will conduct fiduciary activities, describe the fiduciary activities that you conduct or will conduct in each new State, and provide sufficient information supporting a conclusion that the activities are permissible in the State.

(b) You must file the notice with the appropriate OTS Regional Office at the address in § 516.40(a) of this chapter.

6. Section 550.130 is revised to read as follows:

§ 550.130 How may I conduct multi-state operations?

(a) Conducting fiduciary activities in more than one State. You may conduct fiduciary activities in any State, subject to the application and notice requirements in subpart A of this part.

(b) Serving customers in more than one State. When you conduct fiduciary activities in a State:

(1) You may market your fiduciary services to, and act as a fiduciary for, customers located in any State, may act as a fiduciary for relationships that include property located in other States, and may act as a testamentary trustee for a testator located in other States.

(2) You may establish or utilize an office in any State to perform activities that are ancillary to your fiduciary business.

7. Section 550.135 is added to read as follows:

§ 550.135 What State laws apply to my operations?

(a)(1) The State laws that apply to you by virtue of 12 U.S.C. 1464(n) are the laws of the States in which you conduct fiduciary activities. For each individual State, you may conduct fiduciary activities in the capacity of trustee, executor, administrator, guardian, or in any other fiduciary capacity the State permits for its State banks, trust companies, or other corporations that compete with Federal savings associations in the State.

(2) For each fiduciary relationship, the State referred to in 12 U.S.C. 1464(n) is the State in which you conduct fiduciary activities for that relationship.

(b) Except for State laws made applicable to you by virtue of 12 U.S.C. 1464(n), State laws that purport to regulate any other aspect of your fiduciary activities do not apply to your fiduciary operations.

8. Section 550.310 is amended by removing the first sentence and adding two sentences in its place to read as follows:

§ 550.310 What if the FDIC does not insure the deposits?

If the FDIC does not insure the entire amount of a self deposit, you must set aside collateral as security. If the FDIC does not insure the entire amount of an affiliate deposit, you or your affiliate must set aside collateral as security.* * *

9. In § 550.580, paragraph (c) is removed and the heading and introductory text of §550.580 are amended to read as follows:

§ 550.580 When may I conduct fiduciary activities without obtaining OTS approval?

Subject to the requirements of this subpart E, you do not need OTS approval under subpart B of this part if you conduct fiduciary activities in the following fiduciary capacities:

* * * * *

10. The heading and introductory text of § 550.600 are revised to read as follows:

§ 550.600 How may funds be invested when I act in an exempt fiduciary capacity?

If you act in an exempt fiduciary capacity under § 550.580, the funds of the fiduciary account may be invested only in the following:

* * * * *

11. A new part 551 is added as follows:

PART 551—RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS

Sec.

551.10 What does this part do?
551.20 Must I comply with this part?
551.30 What requirements apply to excepted transactions?
551.40 What definitions apply to this part?

Subpart A—Recordkeeping Requirements

551.50 What records must I maintain for securities transactions?
551.60 How must I maintain my records?

Subpart B—Content and Timing of Notice

551.70 What type of notice must I provide when I effect a securities transaction for a customer?
551.80 How do I provide a registered broker-dealer confirmation?
551.90 How do I provide a written notice?
551.100 What are the alternate notice requirements?
551.110 May I provide a notice electronically?
551.120 May I charge a fee for a notice?

Subpart C—Settlement of Securities Transactions

551.130 When must I settle a securities transaction?

Subpart D—Securities Trading Policies and Procedures

551.140 What policies and procedures must I maintain and follow for securities transactions?
551.150 How do my officers and employees file reports of personal securities trading transactions?

Authority: 12 U.S.C. 1462a, 1463, 1464

§ 551.10 What does this part do?

This part establishes recordkeeping and confirmation requirements that apply when a savings association (''you'') effects certain securities transactions for customers.

§ 551.20 Must I comply with this part?

(a) General. Except as provided under paragraph (b) of this section, you must comply with this part when:

(1) You effect a securities transaction for a customer.

(2) You effect a transaction in government securities.

(3) You effect a transaction in municipal securities and are not registered as a municipal securities dealer with the SEC.

(4) You effect a securities transaction as fiduciary. If you are a Federal savings association, you also must comply with 12 CFR part 550 when you effect such a transaction. If you are a State savings association, you must comply with applicable law when you effect such a transaction.

(b) Exceptions. (1) Small number of transactions. You are not required to comply with § 551.50(b) through (d) (recordkeeping) and § 551.140(a) through (c) (policies and procedures), if you effected an average of fewer than 500 securities transactions per year for customers over the three prior calendar years. You may exclude transactions in government securities when you calculate this average.

(2) Government securities. If you effect fewer than 500 government securities brokerage transactions per year, you are not required to comply with § 551.50 (recordkeeping) for those transactions. This exception does not apply to government securities dealer transactions. See 17 CFR 404.4(a).

(3) Municipal securities. If you are registered with the SEC as a ''municipal securities dealer,'' as defined in 15 U.S.C. 78c(a)(30) (see 15 U.S.C. 78o–4), you are not required to comply with this part when you conduct municipal securities transactions.

(4) Foreign branches. You are not required to comply with this part when you conduct a transaction at your foreign branch.

(5) Transactions by registered broker-dealers. You are not required to comply with this part for securities transactions effected by a registered broker-dealer, if the registered broker-dealer directly provides the customer with a confirmation. These transactions include a transaction effected by your employee who also acts as an employee of a registered broker-dealer (''dual employee'').

§ 551.30 What requirements apply to all transactions?

You must effect all transactions, including transactions excepted under § 551.20, in a safe and sound manner. You must maintain effective systems of records and controls regarding your customers' securities transactions. These systems must clearly and accurately reflect all appropriate information and provide an adequate basis for an audit.

§ 551.40 What definitions apply to this part?

Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period. Asset-backed security includes any rights or other assets designed to ensure the servicing or timely distribution of proceeds to the security holders.

Common or collective investment fund means any fund established under 12 CFR 550.260(b) or 12 CFR 9.18.

Completion of the transaction means:

(1) If the customer purchases a security through or from you, except as provided in paragraph (2) of this definition, the time the customer pays you any part of the purchase price. If payment is made by a bookkeeping entry, the time you make the bookkeeping entry for any part of the purchase price.

(2) If the customer purchases a security through or from you and pays for the security before you request payment or notify the customer that payment is due, the time you deliver the security to or into the account of the customer.

(3) If the customer sells a security through or to you, except as provided in paragraph (4) of this definition, the time the customer delivers the security to you. If you have custody of the security at the time of sale, the time you transfer the security from the customer's account.

(4) If the customer sells a security through or to you and delivers the security to you before you request delivery or notify the customer that delivery is due, the time you pay the customer or pay into the customer's account.

Customer means a person or account, including an agency, trust, estate, guardianship, or other fiduciary account for which you effect a securities transaction. Customer does not include a broker or dealer, or you when you:

(1) Act as a broker or dealer;

(2) Act as a fiduciary with investment discretion over an account;

(3) Are a trustee that acts as the shareholder of record for the purchase or sale of securities; or

(4) Are the issuer of securities that are the subject of the transaction.

Debt security means any security, such as a bond, debenture, note, or any other similar instrument that evidences a liability of the issuer (including any security of this type that is convertible into stock or a similar security). Debt security also includes a fractional or participation interest in these debt securities. Debt security does not include securities issued by an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a–1, et seq.

Government security means:

(1) A security that is a direct obligation of, or an obligation that is guaranteed as to principal and interest by, the United States;

(2) A security that is issued or guaranteed by a corporation in which the United States has a direct or indirect interest if the Secretary of the Treasury has designated the security for exemption as necessary or appropriate in the public interest or for the protection of investors;

(3) A security issued or guaranteed as to principal and interest by a corporation if a statute specifically designates, by name, the corporation's securities as exempt securities within the meaning of the laws administered by the SEC; or

(4) Any put, call, straddle, option, or privilege on a government security described in this definition, 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.

Investment company plan means any plan under which:

(1) A customer purchases securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940, making the payments directly to, or made payable to, the registered investment company, or the principal underwriter, custodian, trustee, or other designated agent of the registered investment company; or

(2) A customer sells securities issued by an open-end investment company or unit investment trust registered under the Investment Company Act of 1940 under:

(i) An individual retirement or individual pension plan qualified under the Internal Revenue Code; or

(ii) A contractual or systematic agreement under which the customer purchases at the applicable public offering price, or redeems at the applicable redemption price, securities in specified amounts (calculated in security units or dollars) at specified time intervals, and stating the commissions or charges (or the means of calculating them) that the customer will pay in connection with the purchase.

Investment discretion means the same as under 12 CFR 550.40(a).

Municipal security means:

(1) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, a State or any political subdivision, or any agency or instrumentality of a State or any political subdivision.

(2) A security that is a direct obligation of, or an obligation guaranteed as to principal or interest by, any municipal corporate instrumentality of one or more States; or

(3) A security that is an industrial development bond, the interest on which is excludable from gross income under section 103(a) of the Code (26 U.S.C. 103(a)).

Periodic plan means a written document that authorizes you to act as agent to purchase or sell for a customer a specific security or securities (other than securities issued by an open end investment company or unit investment trust registered under the Investment Company Act of 1940). The written document must authorize you to purchase or sell in specific amounts (calculated in security units or dollars) or to the extent of dividends and funds available, at specific time intervals, and must set forth the commission or charges to be paid by the customer or the manner of calculating them.

SEC means the Securities and Exchange Commission.

Security means any note, stock, treasury stock, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, and any put, call, straddle, option, or privilege on any security or group or index of securities (including any interest therein or based on the value thereof), or, in general, any instrument commonly known as a ''security''; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing. Security does not include currency; any note, draft, bill of exchange, or banker's acceptance which has a maturity at the time of issuance of less than nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited; a deposit or share account in a Federal or State chartered depository institution; a loan participation; a letter of credit or other form of bank indebtedness incurred in the ordinary course of business; units of a collective investment fund; interests in a variable amount (master) note of a borrower of prime credit; U.S. Savings Bonds; or any other instrument OTS determines does not constitute a security for purposes of this part.

Sweep account means any prearranged, automatic transfer or sweep of funds above a certain dollar level from a deposit account to purchase a security or securities, or any prearranged, automatic redemption or sale of a security or securities when a deposit account drops below a certain level with the proceeds being transferred into a deposit account.

Subpart A—Recordkeeping Requirements

§ 551.50 What records must I maintain for securities transactions?

If you effect securities transactions for customers, you must maintain all of the following records for at least three years:

(a) Chronological records. You must maintain an itemized daily record of each purchase and sale of securities in chronological order, including:

(1) The account or customer name for which you effected each transaction;

(2) The name and amount of the securities;

(3) The unit and aggregate purchase or sale price;

(4) The trade date; and

(5) The name or other designation of the registered broker-dealer or other person from whom you purchased the securities or to whom you sold the securities.

(b) Account records. You must maintain account records for each customer reflecting:

(1) Purchases and sales of securities;

(2) Receipts and deliveries of securities;

(3) Receipts and disbursements of cash; and

(4) Other debits and credits pertaining to transactions in securities.

(c) Memorandum (order ticket). You must make and keep current a memorandum (order ticket) of each order or any other instruction given or received for the purchase or sale of securities (whether executed or not), including:

(1) The account or customer name for which you effected each transaction;

(2) Whether the transaction was a market order, limit order, or subject to special instructions;

(3) The time the trader received the order;

(4) The time the trader placed the order with the registered broker-dealer, or if there was no registered broker-dealer, the time the trader executed or cancelled the order;

(5) The price at which the trader executed the order;

(6) The name of the registered broker-dealer you used.

(d) Record of registered broker-dealers. You must maintain a record of all registered broker-dealers that you selected to effect securities transactions and the amount of commissions that you paid or allocated to each registered broker-dealer during each calendar year.

(e) Notices. You must maintain a copy of the written notice required under subpart B of this part.

§ 551.60 How must I maintain my records?

(a) You may maintain the records required under § 551.50 in any manner, form, or format that you deem appropriate. However, your records must clearly and accurately reflect the required information and provide an adequate basis for an audit of the information.

(b) You, or the person that maintains and preserves records on your behalf, must:

(1) Arrange and index the records in a way that permits easy location, access, and retrieval of a particular record;

(2) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section;

(3) Provide promptly any of the following that examiners or your directors may request:

(i) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(ii) A legible, true, and complete printout of the record; and

(iii) Means to access, view, and print the records.

(4) In the case of records on electronic storage media, you, or the person that maintains and preserves records for you, must establish procedures:

(i) To maintain, preserve, and reasonably safeguard the records from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel, your directors, and OTS examiners; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(c) You may contract with third party service providers to maintain the records.

Subpart B—Content and Timing of Notice

§ 551.70 What type of notice must I provide when I effect a securities transaction for a customer?

If you effect a securities transaction for a customer, you must give or send the customer the registered broker-dealer confirmation described at § 551.80, or the written notice described at § 551.90. For certain types of transactions, you may elect to provide the alternate notices described in § 551.100.

§ 551.80 How do I provide a registered broker-dealer confirmation?

(a) If you elect to satisfy § 551.70 by providing the customer with a registered broker-dealer confirmation, you must provide the confirmation by having the registered broker-dealer send the confirmation directly to the customer or by sending a copy of the registered broker-dealer's confirmation to the customer within one business day after you receive it.

(b) If you have received or will receive remuneration from any source, including the customer, in connection with the transaction, you must provide a statement of the source and amount of the remuneration in addition to the registered broker-dealer confirmation described in paragraph (a) of this section.

§ 551.90 How do I provide a written notice?

If you elect to satisfy § 551.70 by providing the customer a written notice, you must give or send the written notice at or before the completion of the securities transaction. You must include all of the following information in a written notice:

(a) Your name and the customer's name.

(b) The capacity in which you acted (for example, as agent).

(c) The date and time of execution of the securities transaction (or a statement that that you will furnish this information within a reasonable time after the customer's written request), and the identity, price, and number of shares or units (or principal amount in the case of debt securities) of the security the customer purchased or sold.

(d) The name of the person from whom you purchased or to whom you sold the security, or a statement that you will furnish this information within a reasonable time after the customer's written request.

(e) The amount of any remuneration that you have received or will receive from the customer in connection with the transaction unless the remuneration paid by the customer is determined under a written agreement, other than on a transaction basis;

(f) The source and amount of any other remuneration you have received or will receive in connection with the transaction. If, in the case of a purchase, you were not participating in a distribution, or in the case of a sale, were not participating in a tender offer, the written notice may state whether you have or will receive any other remuneration and state that you will furnish the source and amount of the other remuneration within a reasonable time after the customer's written request.

(g) That you are not a member of the Securities Investor Protection Corporation, if that is the case. This does not apply to a transaction in shares of a registered open-end investment company or unit investment trust if the customer sends funds or securities directly to, or receives funds or securities directly from, the registered open-end investment company or unit investment trust, its transfer agent, its custodian, or a designated broker or dealer who sends the customer either a confirmation or the written notice in this section.

(h) Additional disclosures. You must provide all of the additional disclosures described in the following chart for transactions involving certain debt securities:

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(1) A debt security subject to redemption before maturity	A statement that the issuer may redeem the debt security in whole or in part before maturity, that the redemption could affect the represented yield, and that additional information is available upon request.
(2) A debt security that you effected exclusively on the basis of a dollar price.	(i) The dollar price at which you effected the transaction; and (ii) The yield to maturity calculated from the dollar price. You do not have to disclose the yield to maturity if: (A) The issuer may extend the maturity date of the security with a variable interest rate, or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.
(3) A debt security that you effected on basis of yield	(i) The yield at which you effected the transaction, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call). If you effected the transaction at yield to call, you must indicate the type of call, the call date, and the call price; (ii) The dollar price calculated from that yield; and (iii) The yield to maturity and the represented yield, if you effected the transaction on a basis other than yield to maturity and the yield to maturity is lower than the represented yield. You are not required to disclose this information if: (A) The issuer may extend the maturity date of the security with a variable interest rate; or (B) The security is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.

If you effect a transaction involving . . .	You must provide the following additional information in your written notice . . .
(4) A debt security that is an asset-backed security that represents an interest in, or is secured by, a pool of receivables or other financial assets that are subject continuously to prepayment.	(i) A statement that the actual yield of the asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid; and (ii) A statement that you will furnish information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions underlying yield) upon the customer's written request.
(5) A debt security, other than a government security	A statement that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

§ 551.100 What are the alternate notice requirements?

You may elect to satisfy § 551.70 by providing the alternate notices described in the following chart for certain types of transactions.

If you effect a securities transaction . . .	Then you may elect to . . .
(a) For or with the account of a customer under a periodic plan, sweep account, or investment company plan;	Give or send to the customer within five business days after the end of each quarterly period a written statement disclosing: (1) Each purchase and redemption that you effected for or with, and each dividend or distribution that you credited to or reinvested for, the customer's account during the period; (2) The date of each transaction; (3) The identity, number, and price of any securities that the customer purchased or redeemed in each transaction; (4) The total number of shares of the securities in the customer's account; (5) Any remuneration that you received or will receive in connection with the transaction; and (6) That you will give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(b) For or with the account of a customer in shares of an open-ended management company registered under the Investment Company Act of 1940 that holds itself out as a money market fund and attempts to maintain a stable net asset value per share . . .	Give or send to the customer the written statement described at paragraph (a) of this section on a monthly basis. You may not use the alternate notice, however, if you deduct sales loads upon the purchase or redemption of shares in the money market fund.
(c) For an account for which you do not exercise investment discretion, and for which you and the customer have agreed in writing to an arrangement concerning the time and content of the written notice . . .	Give or send to the customer a written notice at the agreed-upon time and with the agreed-upon content, and include a statement that you will furnish the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after the customer's written request.
(d) For an account for which you exercise investment discretion other than in an agency capacity, excluding common or collectively investment funds . . .	Give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a written request by the person with the power to terminate the account or, if there is no such person, any person holding a vested beneficial interest in the account.
(e) For an account in which you exercise investment discretion in an agency capacity . . .	Give or send each customer a written itemized statement specifying the funds and securities in your custody or possession and all debits, credits, and transactions in the customer's account. You must provide this information to the customer not less than once every three months. You must give or send the registered broker-dealer confirmation described in § 551.80 or the written notice described in § 551.90 within a reasonable time after a customer's written request.
(f) For a common or collective investment fund . . .	(1) Give or send to a customer who invests in the fund a copy of the annual financial report of the fund, or (2) Notify the customer that a copy of the report is available and that you will furnish the report within a reasonable time after a written request by a person to whom a regular periodic accounting would ordinarily be rendered with respect to each participating account.

§ 551.110 May I provide a notice electronically?

You may provide any written notice required under this subpart B electronically. If a customer has a facsimile machine, you may send the notice by facsimile transmission. You may use other electronic communications if:

(a) The parties agree to use electronic instead of hard copy notices;

(b) The parties are able to print or download the notice;

(c) The system cannot automatically delete the electronic notice; and

(d) Both parties are able to receive electronic messages.

§ 551.120 May I charge a fee for a notice?

You may not charge a fee for providing a notice required under this subpart B, except that you may charge

a reasonable fee for the notices provided under §§ 551.100(a), (d), and (e).

Subpart C—Settlement of Securities Transactions

§ 551.130 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 third business day after the date of the contract. This deadline is no later than the fourth business day after the contract for contracts involving 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:

(i) 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

(ii) Are sold by you to an initial purchaser participating in the offering;

(2) Such other time as the SEC specifies by rule (*see* SEC Rule 15c6–1, 17 CFR 240.15c6–1); or

(3) Such time as the parties expressly agree at the time of the transaction. The parties to a contract are deemed to have expressly agreed to an alternate date for payment of funds and delivery of securities at the time of the transaction for a contract for the sale for cash of securities under a firm commitment offering, if the managing underwriter and the issuer have agreed to the date for all securities sold under the offering and the parties to the contract have not expressly agreed to another date for payment of funds and delivery of securities at the time of the transaction.

(b) The deadlines in paragraph (a) of this section do not apply to the purchase or sale of limited partnership interests that are not listed on an exchange or for which quotations are disseminated through an automated quotation system of a registered securities association.

Subpart D—Securities Trading Policies and Procedures

§ 551.140 What policies and procedures must I maintain and follow for securities transactions?

If you effect securities transactions for customers, you must maintain and follow policies and procedures that meet all of the following requirements:

(a) Your policies and procedures must assign responsibility for the supervision of all officers or employees who:

(1) Transmit orders to, or place orders with, registered broker-dealers;

(2) Execute transactions in securities for customers; or

(3) Process orders for notice or settlement purposes, or perform other back office functions for securities transactions that you effect for customers. Policies and procedures for personnel described in this paragraph (a)(3) must provide supervision and reporting lines that are separate from supervision and reporting lines for personnel described in paragraphs (a)(1) and (2) of this section.

(b) Your policies and procedures must provide for the fair and equitable allocation of securities and prices to accounts when you receive orders for the same security at approximately the same time and you place the orders for execution either individually or in combination.

(c) Your policies and procedures must provide for securities transactions in which you act as agent for the buyer and seller (crossing of buy and sell orders) on a fair and equitable basis to the parties to the transaction, where permissible under applicable law.

(d) Your policies and procedures must require your officers and employees to file the personal securities trading reports described at § 551.150, if the officer or employee:

(1) Makes investment recommendations or decisions for the accounts of customers;

(2) Participates in the determination of these recommendations or decisions; or

(3) In connection with their duties, obtains information concerning which securities you intend to purchase, sell, or recommend for purchase or sale.

§ 551.150 How do my officers and employees file reports of personal securities trading transactions?

An officer or employee described in § 551.140(d) must report all personal transactions in securities made by or on behalf of the officer or employee if he or she has a beneficial interest in the security.

(a) Contents and filing of report. The officer or employee must file the report with you within ten business days after the end of each calendar quarter. The report must include the following information:

(1) The date of each transaction, the title and number of shares, the interest rate and maturity date (if applicable), and the principal amount of each security involved.

(2) The nature of each transaction (*i.e.,* purchase, sale, or other type of acquisition or disposition).

(3) The price at which each transaction was effected.

(4) The name of the broker, dealer, or other intermediary effecting the transaction.

(5) The date the officer or employee submitted the report.

(b) Report not required for certain transactions. Your officer or employee is not required to report a transaction if:

(1) He or she has no direct or indirect influence or control over the account for which the transaction was effected or over the securities held in that account;

(2) The transaction was in shares issued by an open-end investment company registered under the Investment Company Act of 1940;

(3) The transaction was in direct obligations of the government of the United States;

(4) The transaction was in bankers' acceptances, bank certificates of deposit, commercial paper or high quality short term debt instruments, including repurchase agreements; or

(5) The officer or employee had an aggregate amount of purchases and sales of $10,000 or less during the calendar quarter.

(c) Alternate report. When you act as an investment adviser to an investment company registered under the Investment Company Act of 1940, an officer or employee that is an ''access person'' may fulfill his or her reporting requirements under this section by filing with you the ''access person'' personal securities trading report required by SEC Rule 17j–1(d), 17 CFR 270.17j–1(d).

Dated: May 23, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–378–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; and A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness