

AL 96-2

Subject: Overnight Hold-In-Custody
Repurchase Transactions

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

PURPOSE

This advisory informs national banks that the Government Securities Act (GSA) regulations issued by the Department of Treasury (Treasury) require daily confirmations for overnight hold-in-custody (HIC) repurchase agreement transactions. This applies to banks that are offering HIC repurchase agreement programs, commonly termed "sweep repos." Based on advice we received from the Treasury, we want to make it clear that the GSA regulations and interpretations currently do not permit other than daily confirmations for such transactions.

BACKGROUND

The Chief National Bank Examiner's Office has received numerous questions recently about whether daily confirmation disclosures for sweep repo accounts are necessary. Several banks have commented that daily confirmations for sweep repos are unnecessary, burdensome, and costly. They have requested permission to issue confirmations less frequently than daily; some have suggested that monthly account statements could be issued at the customer's option.

ISSUES

The Bureau of the Public Debt, a Treasury bureau, is responsible for administering the regulations implementing the GSA. Its regulations at 17 CFR 403.5(d) require financial institutions and government securities broker-dealers engaging in HIC repurchase transactions to issue confirmations for such repurchase transactions by the end of the day in which a transaction is initiated. The regulations also require confirmations to be issued at the end of any other day in which substitution of securities occurs. These confirmation requirements apply to all repurchase transactions in which the selling institution keeps control of the underlying securities. In addition, the operational requirements for a daily sweep repo program currently require institutional control of the underlying securities.

In December 1992, the Federal Financial Institutions Examination Council's Regulatory Burden Study Group, in consultation with the Treasury, reviewed the issue of whether daily confirmations are burdensome. The study affirmed Treasury's longstanding position that daily confirmations provide fundamental customer protection because they have significant value to investors in identifying the specific securities transactions that are the subject of the repurchase transactions. Confirmations also permit customers to verify that securities of an appropriate type and value are

allocated to the transactions. In addition, the GSA regulations do not permit any other exclusions from the confirmation requirements except for situations involving foreign corporations, partnerships, trusts, or non-U.S. citizens residing outside of the United States. In such situations these entities must provide written notification that they are waiving the right to receive confirmations.

The Treasury has advised us that the provisions of Section 403.5(d) require daily confirmations of sweep repos because they are recurring transactions, generally giving rise to a new repurchase transaction daily. The Treasury has also advised us that the requirement that the confirmation take place by the end of the business day means that the confirmation be sent prior to opening for the next day of business. Thus, for overnight sweep repurchase agreements, the confirmation must be available for delivery to the customer before or at the start of the bank's next business day. As an alternative to mailing confirmations, the Treasury has issued an interpretation stating that a facsimile (fax) is an acceptable means of complying with the written confirmation requirements of Section 403.5(d)(1)(ii), provided the counterparty has agreed to accept confirmations by this method. An unsuccessful fax transmission, however, does not relieve the bank of its obligation under this section. If fax transmissions are unavailable to any customer at any time or for any reason, the bank must provide written confirmation by mail or other appropriate means.

REFERENCES

Background information and interpretations regarding the importance of customer confirmations and the specific regulatory requirements pertaining to repurchase agreement transactions are contained in the preambles to the following four rulemaking initiatives: 52 FR 19642, May 26, 1987; 52 FR 27910, July 24, 1987; 53 FR 8598, March 15, 1988; and, 53 FR 28978, August 1, 1988. For rulemaking proposals that address the requirements for overnight HIC repurchase transactions, including sweep repos, you should reference 52 FR 19658-59, May 26, 1987; 52 FR 27919, July 24, 1987; 53 FR 8600, March 15, 1988; and 53 FR 28981-82, August 1, 1988.

Section 403.5(d) contains rules applicable to financial institutions that engage in hold-in-custody repurchase transactions. These rules parallel the GSA requirements that apply to brokers and dealers that are not financial institutions.

If your bank has questions or needs an interpretation of these confirmation requirements or other GSA regulations, you may call or write Bureau of the Public Debt, Government Securities Regulations Staff, Washington, DC, 20239, (202) 219-3632. For further information contact the Office of the Chief National Bank Examiner, Capital Markets, (202) 874-5070.

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