



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

September 9, 2008

Interpretive Letter #1111
March 2009
12 CFR 12

Subject: [*Bank, City, State*] (“Bank”) – Request for
Waiver from 12 C.F.R. Part 12 Confirmation Requirements

Dear []:

This relates to a request by the Bank that the Office of the Comptroller of the Currency (“OCC”) waive a provision of 12 C.F.R. Part 12 in connection with the Bank’s administration of stock purchase and sale plans of companies for which it acts as transfer agent (“Plans”). The Bank seeks, for individually executed Plan transactions, a waiver pursuant to 12 C.F.R. § 12.8 of the requirement to send confirmations “at or before completion of the transaction,” and permission to instead send confirmations “promptly” after transactions. In addition to the waiver request, the Bank proposes a specific method for disclosing the time of execution for individually executed Plan transactions upon written request under 12 C.F.R. § 12.4(a)(4). As discussed below, the OCC is granting the Bank’s waiver request, provided the confirmations are sent no later than four trading days after execution of the transactions. The OCC also confirms that the Bank may disclose the time of execution for individually executed Plan transactions upon written request, as proposed.

Background and Current Request

In Interpretive Letter No. 1029, dated May 23, 2005 (the “Waiver letter”), the OCC granted the Bank, then known as [], waivers from several requirements of Part 12 for confirmations of transactions for Plans.¹ These included a waiver of the requirement to send confirmations, for Plan transactions executed on an aggregated or batched basis, “at or before completion” of transactions as specified in 12 C.F.R. § 12.4, and permission to send the confirmations “promptly” after transactions. Under the batching procedure, the Bank aggregates

¹ The OCC’s confirmation regulations at 12 C.F.R. Part 12 are modeled closely on the confirmation rules of the Securities and Exchange Commission (“SEC”) under Securities Exchange Act Rule 10b-10 (17 C.F.R. § 240.10b-10). The OCC intends to administer Part 12 in a fashion consistent with the SEC’s rules in order to facilitate comparable investor protection. Accordingly, the OCC consulted closely with the SEC staff in processing both the Waiver letter and this response.

orders for many customers into a single order and sends the order to a broker for execution. The broker, in turn, might execute the aggregated order in a single transaction, or in a number of trades, sometimes over multiple days.

The Bank noted, in an inquiry preceding the Waiver letter, that sending the confirmation at or before completion of the transaction, as specified in 12 C.F.R. § 12.4, was burdensome and impractical because it would be required to subdivide transactions into individual participant components before notifications could be prepared. Accordingly, the Waiver letter provided that

[t]he OCC will allow notifications to be sent “promptly” after transactions, rather than at or before completion of each transaction as specified in 12 C.F.R. § 12.4. However, such notifications shall be sent no later than four trading days after the last transaction effected in the aggregated *batch* (emphasis supplied).²

The Bank notes that occasionally a single order is received for stock, such as for the liquidation of a stock position held by an individual Plan participant. In such cases, the order may be routed to the registered broker for execution at the time it is received. There may, or may not, be another transaction in the same stock that day. The Bank asks whether, for these and other individually processed orders, it may send confirmations “promptly” consistent with the Waiver letter.

Discussion

You represent that the overwhelming majority of Plan transactions are executed on an aggregate basis. Due to the way Plans are structured, individuals tend to acquire shares in series of transactions on specified investment dates, in an aggregate mode with other shareholders. These constitute the vast majority of transactions, and are executed on an aggregate basis. Many individual or one-time purchases or sales that occur under Plans also may be executed on an aggregate basis.³ But individual purchases or sales that occur under Plans occasionally may be executed individually.

The Bank has a standardized confirmation generation system and procedure for Plans designed to deal with aggregated or batched transactions, and believes that using a single system for all transactions, including individually executed transactions, will permit it to maintain its low cost

² OCC also granted certain other waivers that were not specifically directed at the aggregation or “batching” process. See Interpretive Letter No. 1029 (May 23, 2005).

³ Transactions covered by the Waiver letter were not restricted to automatic investment authorizations within the definition of “periodic plan” in 12 C.F.R. 12.2(j). A “periodic plan” as defined therein means a written authorization for a national bank to act as agent to purchase or sell for a customer a specific security or securities, in a specific amount or to the extent of dividends and funds available, at specific time intervals. These plans include dividend reinvestment plans, automatic investment plans and employee stock purchase plans. A periodic plan also includes any prearranged, automatic transfer or “sweep” of funds from a deposit account to purchase a security, or any prearranged, automatic redemption or sale of a security with the funds being transferred into a cash account (including cash management sweep services). The Bank has explained that in addition to the types of transactions in periodic plans, its Plans may involve initial purchases of shares, unsolicited requests for purchase of an issuer’s securities, and purchases other than through dividend reinvestments, by Plan participants.

structure. While the number of individually executed transactions is small, maintaining a separate confirmation procedure to accommodate them would be costly.

The Bank believes that providing “prompt” delivery of confirmations for all Plan transactions, including individually processed orders, rather than providing confirmations at or before completion of transactions, achieves the purposes of the transaction notification requirements. It assures that individual Plan participants are fully informed of the material elements of their transaction, and is timely enough for Plan participants to detect any errors.

Waiver

Under 12 C.F.R. § 12.8, a national bank may file a written request with the OCC for waiver of one or more of the requirements of 12 C.F.R. §§ 12.2 through 12.7, either in whole or in part. The OCC may grant a waiver from those requirements with regard to a specific transaction or a specific class of transactions. In analyzing a waiver request OCC considers, among other factors, whether a waiver will result in cost savings or burden reduction to a bank without imposing significant harm or risk on customers or otherwise compromising the underlying purpose of the requirement.

In this case, while only a small number of transactions will be executed on an individual basis, the Bank represents that it would be costly to maintain a separate confirmation system to generate confirmations that would be used only for those transactions. Sending confirmations promptly after transactions will delay customer receipt of confirmations, but this delay can be minimized if confirmations are sent within four days following execution of trades, similar to the requirement in the Waiver letter of four days following the last transaction in the aggregate batch.

Therefore, to accommodate the Bank’s confirmation generation system designed to handle aggregated orders, which constitute the overwhelming majority of transactions the Bank is required to process, OCC will waive the requirement that the Bank confirm individually processed transactions “at or before completion of the transaction” under 12 C.F.R. § 12.4. Instead, OCC will permit the Bank to confirm such transactions “promptly” after transactions, provided the confirmations are sent no later than four trading days after execution of the respective individual trades.

Disclosure of Time of Execution for Individual Transactions Upon Written Request

In addition to the request for waiver, the Bank also proposes a specific method for disclosing the time of execution for individually executed Plan transactions only upon written request under 12 C.F.R. § 12.4(a)(4).⁴ The Bank indicates that the confirmation format will not distinguish between individual transactions, batched transactions, or internet sales. Except for internet

⁴ Consistent with the treatment of aggregated or batched transactions under the Waiver letter, [**Bank**] proposes not to report the time of the transaction on the confirmation. But unlike the case for aggregated or batched transactions, [**Bank**] indicates it is feasible to trace and disclose information on the time of execution for individual trades, and is willing to provide that information upon written request.

transactions, which are executed individually, customers will not know whether their trades were executed as individual trades or as part of a batch. Therefore, the Bank proposes adding the following language to all confirmations: "Information concerning the time of your trade execution will be available in some instances, and may be obtained upon written request." This reflects the fact that in the majority of cases, the transactions will occur in aggregated batches and the time of a particular investor's transaction would be not available if execution of the batch occurred in multiple transactions. When it is available, the Bank is willing to provide it. For internet transactions, the Bank will add the following information to the website: "Information concerning the time of your trade execution is available upon written request." This is to confirm that the Bank may disclose the time of execution for individually executed Plan transactions upon written request, as proposed above.

Conclusion

In conclusion, the Bank may send confirmations for individually executed Plan transactions promptly after transactions, rather than at or before completion of transactions, provided the confirmations are sent no more than four trading days after execution of the transactions. The Bank also may disclose the time of execution for individually executed Plan transactions as proposed above. Our response is based on the Bank's representations as described in this letter and any changes in the facts or circumstances could result in different conclusions. If you have further questions or concerns, please contact Michael Dugas, Senior Attorney, Securities and Corporate Practices Division, at 202-874-4497.

Sincerely,

signed

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel