



# **BANKING ISSUANCE**

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Comptroller of the Currency  
Administrator of National Banks

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Type: Banking Bulletin

Subject: Department of Treasury HIC  
Repurchase Transactions

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To: Chief Executive Officers of All National Banks and All  
Examining Personnel

The Bureau of the Public Debt of the Department of the Treasury recently issued the attached interpretive letter concerning the required timing of the allocation of securities to customer accounts (repurchase agreement collateral) in hold-in-custody (HIC) repurchase transactions.

At the request of the Bureau of Public Debt, the OCC is forwarding that interpretive letter to all national banks and examining personnel. If you have questions or need clarification regarding this matter, please contact Joseph W. Malott or C. Rachel Romyn, Capital Markets at 202-874-5070, or the Bureau of the Public Debt directly at 202-219-3632.

Donald G. Coonley  
Chief National Bank Examiner

Attachment

DEPARTMENT OF THE TREASURY  
BUREAU OF THE PUBLIC DEBT  
WASHINGTON, D.C. 20239-0001

June 21, 1993

Dear Mr. Coonley:

The Government Securities Regulations Staff has received several inquiries concerning the required timing of the allocation of securities to customer accounts (i.e., repurchase agreement collateral) in hold-in-custody repurchase transactions (hold-in-custody repos) pursuant to the requirements set out in the regulations promulgated pursuant to the Government Securities Act of 1986 (the "GSA," Pub. L. 99-571, 100 Stat. 3208, 15 U.S.C. 78o-5). This interpretation is intended to clarify the requirements of the GSA regulations in this.

Specifically, in accordance with 17 CFR 403.5(d)(1)(vi), any financial institution that retains custody of securities that are the subject of a repurchase agreement between the financial institution and a counterparty must maintain possession or control of the securities that are the subject of the repurchase agreement in accordance with section 450.4(a). Pursuant to 17 CFR 450.4(a)(1), a depository institution that holds government securities as custodian for the account of a customer must maintain possession or control of the government securities by segregating such securities from the assets of the depository institution and keeping them free of any lien, charge or claim of a third party.

There are also requirements under the GSA regulations (17 CFR Ch. IV) that specific records be made and kept relating to the custody of securities. Paragraph 404.4(a)(2) provides that government securities brokers and dealers that are financial institutions must comply with the recordkeeping requirements of sections 450.4(c), (d) and (f). Pursuant to 17 CFR 450.4(c), records of government securities held for customers shall be maintained and kept separate and distinct from other records of the depository institution. Such records shall provide a system for identifying each customer, and each government security (or the amount of each issue of a government security issued in book-entry form) held for the customer, and describe the customer's interest in the government security. Further, paragraph 404.4(a)(3)(i)(A) of the GSA regulations requires that government securities brokers and dealers that are financial institutions make and keep current a securities record or ledger reflecting separately for each government security as of the settlement dates all long or short positions (including government securities that are the subjects of repurchase or reverse repurchase agreements) carried by such financial institutions for its own account or for the account of its customers or others.

It is our understanding that the allocation (segregation) of securities to customer accounts for hold-in-custody repos often occurs as part of the end-of-the-day processing cycle.

Recognizing the importance of ensuring customer protection, no unnecessary delay of the allocation process should occur. We also recognize that a certain amount of time is required, after trading is completed, to finish the normal processing of the day's transactions. However, to remain in compliance with 403.5(d)(1), 404.4 and 450.4 of the GSA regulations, a financial institution must complete the securities allocation process for hold-in-custody repos prior to opening the next business day. Further, for an allocation to be in compliance, the records of a financial institution must identify and list the specific securities that are allocated to each customer in authorized, transferrable denominations.

One of the fundamental objectives that gave rise to the enactment of the GSA, and the subsequent issuance of regulations thereunder, was to strengthen customer protection in hold-in-custody repo transactions. The requirement that financial institutions maintain and allocate specific securities to specific customers is aimed at protecting customer securities in the event of the failure of a financial institution. Without timely and proper allocation, it may not be clear if an interest in the securities has been conveyed to the counterparty. The allocation requirement focuses on eliminating duplicative use of securities as well as precluding pooling of securities (i.e., failing to identify and record specific securities or the books and records of the institution).

We have consulted with staffs of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. This letter is being sent to each of these agencies as guidance. I would appreciate your assistance in advising your examiners and the institutions that your organization supervises of this information.

Pursuant to 17 CFR 400.2(c)(7), this letter will be made immediately available to the public.

Sincerely,  
Richard L. Gregg  
Commissioner

Mr. Donald G. Coonley  
Chief National Bank Examiner  
Office of the Comptroller of the Currency  
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Washington, D.C. 20219