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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

October 4, 2004

**Interpretive Letter #1011**  
**November 2004**  
**12 CFR 12.8**

Re: [ ] (“Bank”)

Dear [ ]:

Pursuant to 12 CFR 12.8, the Bank has requested a waiver from the quarterly beneficial ownership reporting requirements of Part 12 for certain of its officers and employees.<sup>1</sup> Based on the facts you have presented, the OCC is granting the relief you have requested.

*Part 12*

Part 12 requires bank officers and employees to report to the bank within ten business days after the end of the calendar quarter, all personal transactions in securities made by them in which they have a beneficial interest, if those employees and officers either make or participate in investment recommendations or decisions for bank customer accounts, or if they obtain information concerning securities that are purchased, sold or recommended for purchase or sale by the bank.<sup>2</sup> The rule requires reporting employees to provide information concerning the securities transactions, including the transaction date, the number of shares involved, the price, and the name of the broker or dealer that effected the trade.<sup>3</sup> The rule provides exceptions to the

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<sup>1</sup> Part 12 permits a national bank to file a written request with the OCC for waiver of one or more of the requirements in sections 12.2 through 12.7. *See* 12 CFR 12.8.

<sup>2</sup> *See* 12 CFR 12.7(a)(4).

<sup>3</sup> *See* 12 CFR 12.7(b).

reporting requirements, for example, if the employee's securities transactions in the aggregate were below \$10,000.00, or involved government securities or mutual fund shares.<sup>4</sup>

Section 12.7 has a provision entitled "additional reporting requirement," applicable to a national bank that acts as an investment adviser to an investment company and that is subject to the requirements of SEC rule 17j-1, implementing the Investment Company Act of 1940.<sup>5</sup> Section 12.7(d) notes that SEC rule 17j-1 requires an "access person," e.g., directors, officers, and certain employees of the investment adviser, to report certain securities transactions to the investment adviser for review by the SEC. Section 12.7 specifies that "[t]he reporting requirement under paragraph (a)(4) of this section is a separate requirement from any applicable requirements under SEC rule 17j-1." However, access persons required to file reports under SEC rule 17j-1 with a national bank need not file a separate report under Part 12, if the required information is the same.<sup>6</sup>

### *The Bank's Waiver Request*

You have stated that the Bank has instituted both a manual and an automated process to ensure compliance with the reporting requirements of section 12.7(a)(4). The Bank believes that its manual and automated processes are duplicative and burdensome and requests a waiver of the manual quarterly reporting process set out in section 12.7(a)(4).

The manual process is paper-based and provides that all employees in the Bank's trust division must complete a written "Quarterly Report of Personal Security Transactions," reporting all personal security transactions in excess of \$10,000. The information reported on these forms includes the information specified in section 12.7(b). The Bank requires those employees to sign and return the form on a quarterly basis, regardless of whether trades in excess of \$10,000 occurred.

The Bank also maintains an automated process to track compliance with section 12.7. The system contains and tracks all information specified in section 12.7(b). Securities trades processed through the Bank's brokerage subsidiary, [ **OpSub** ], are automatically fed to this system. Employees in the Bank's trust division who conduct securities trades through an independent brokerage (and also for securities trades conducted on behalf of employees in which they have a beneficial interest) must attest annually, in writing, that they have directed the broker to submit duplicate brokerage statements and confirmations of individual trades to the Bank. The Bank reviews the trades documented in statements and confirmations for compliance with section 12.7. The Bank represents that both the NASD and SEC have reviewed the Bank's system and found it to be satisfactory. The Bank retains electronic records for the system in an archive.

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<sup>4</sup> See 12 CFR 12.7(c).

<sup>5</sup> See 12 CFR 12.7(d).

<sup>6</sup> *Id.*

### *Discussion*

It is appropriate to grant the Bank a waiver of the manual, quarterly reporting requirements in section 12.7(a)(4). The Bank states that its manual and automated processes for complying with the reporting requirements of section 12.7(a)(4) are duplicative and that the paper-based manual process for collecting and reviewing reports of the securities transactions of Bank employees is burdensome.

The Bank's automated process for tracking compliance with section 12.7 appears to adequately comply with the rule, except for the requirement that covered employees make a report to the bank within ten business days after the end of the calendar quarter, of all personal transactions in securities made by them in which they have a beneficial interest.<sup>7</sup> While covered employees would not submit required data in paper form each quarter, the Bank would receive all necessary data more promptly than the rule requires, either directly from [ **OpSub** ] or through duplicate brokerage statements and confirmations of individual trades that the Bank receives from other brokerages. The Bank's system in all other respects appears to meet the requirements of section 12.7.<sup>8</sup> The Bank represents that both the NASD and SEC have reviewed the Bank's system and found it to be satisfactory.

### *Conclusion*

Pursuant to 12 C.F.R. 12.8, the Bank has requested a waiver from the quarterly beneficial ownership reporting requirements of Part 12 for certain of its officers and employees. Based on the basis of the facts you have presented, the OCC is granting the relief you have requested.

Sincerely,

/s/ Julie L. Williams

Julie L. Williams  
First Senior Deputy Comptroller  
and Chief Counsel

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<sup>7</sup> See 12 CFR 12.7(a)(4).

<sup>8</sup> Granting the Bank a waiver does not implicate the additional reporting requirement provision of Section 12.7(d), which recognizes as "a separate requirement," the obligation of access persons in national banks that act as investment advisers to investment companies to make certain reports pursuant to SEC rule 17j-1. See 12 CFR 12.7(d). Persons who file reports under SEC rule 17j-1 already need not file a separate report under Part 12, if the required information is the same. *Id.* Recent amendments to rule 17j-1 do not appear to change the ability of access persons to file reports under rule 17j-1 and avoid the reporting requirements of Part 12.