

Department of the Treasury

Regulatory Bulletin

**RB 32-34**



Handbook: **Thrift Activities**

Subject: **Other Activities**

**Section: 710**

**Thrift Activities Regulatory Handbook Update**

**Summary:** This bulletin provides an update to Thrift Activities Regulatory Handbook Section 710, Networking Arrangements (previously Nondeposit Investment Sales). Please remove the existing handbook section and insert the revised section behind the Other Activities tab in Volume II.

**For Further Information Contact:** Your Office of Thrift Supervision (OTS) Regional Office or the Supervision Policy Division of the OTS, Washington, DC. You may access this bulletin at our web site: [www.ots.treas.gov](http://www.ots.treas.gov).

*Regulatory Bulletin 32-34*

**SUMMARY OF CHANGES**

We restructured section 710 so we did not include change bars. We provide a summary of all substantive changes below.

**710 Networking Arrangements**

We reorganized the section to be more understandable. Other changes include:

- A discussion of new developments including the networking exception, the privacy provisions, and functional regulation provisions in the Gramm-Leach-Bliley Act.
- A discussion of TB 83, "Interagency Guidance on Weblinking: Identifying Risks and Risk Techniques."
- A discussion of CEO Memo No. 178, "Networking Arrangements."
- A clarification of OTS examination concerns and permissible networking arrangements.
- Updates to references.
- Adding the Interagency Statement and the Joint Interpretations of the Interagency Statement as Appendices.
- Updates to the NASD District Director's names and addresses in Appendix E.

—Scott M Albinson

**Managing Director, Supervision**

**INTRODUCTION**

Financial institutions can provide their customers with a wide array of financial products and services through networking arrangements. This is where a financial institution enters into a contract with a registered broker-dealer for the provision of brokerage services to its customers. The sale of nondeposit investment products, such as mutual funds, stocks, bonds, variable annuities, municipal bonds, mortgage-backed securities, or limited partnership interests, to savings association customers through networking arrangements is growing. Savings associations offer these products and services to remain competitive by providing one-stop shopping and customer convenience. Offering these products and services also enables savings associations to retain customers and increase fee income. The use of networking arrangements can be an important element of a savings association's profitability and overall business strategy.

This Handbook Section includes the following information:

- Describes the two types of networking arrangements.
- Describes the securities business in general.
- Discusses the risks in networking arrangements.
- States what steps management needs to take to adequately identify, measure, monitor and control the risks associated with its networking arrangement.

The risk-focused approach to examinations allows flexibility in setting the examination scope. The scope must be reasonable and prudent, yet sufficient to evaluate the extent to which the networking arrangement poses risk to the savings association. To determine the level of risk posed by a networking arrangement you must first review the sales program structure and management controls. This review should also alert you to any potentially unsafe and unsound practices.

In this Section we cover in detail the various safeguards and regulatory requirements associated with

the conduct of a safe and sound networking arrangement. There are three main pieces of guidance, among others, that we discuss in this Handbook Section. Savings associations that establish networking arrangements should comply with the guidance found in these documents:

- Interagency Statement on the Sale of Nondeposit Investment Products (Interagency Statement) Thrift Bulletin (TB) 23-2. See the discussion of Interagency Statement later in this Handbook Section. (See Appendix A.)
- Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, TB 23-3. (See Appendix B.)
- The Chubb Letter. A no-action letter issued by the Securities and Exchange Commission (SEC) to Chubb Securities Corporation on November 24, 1993. (See Appendix C.) The Chubb Letter provides restrictions on networking arrangements. OTS, as a policy matter, is applying these restrictions to savings associations that choose to offer nondeposit investment products and services to its customers through networking arrangements. The Chubb Letter restrictions will continue to apply until the SEC issues final regulations regarding broker registration exceptions under the Gramm-Leach-Bliley Act (GLBA) and those regulations become effective.

We discuss these documents in more detail later in this Section.

**New Developments**

In the past, banks were exempted from broker-dealer registration requirements under the Securities Exchange Act of 1934. Savings associations did not have a similar exemption.

In 1999, Congress passed the Gramm-Leach-Bliley Act (GLBA). Section 201 of GLBA removed the blanket registration exemption for banks and substituted specific broker-dealer activities that did not

require registration. The exception for broker activities, for example, permits banks to enter into networking arrangements with registered broker-dealers provided certain conditions are met.

To give banks time to conform their transactions to GLBA requirements and SEC time to issue regulations, the SEC provided banks with a temporary blanket broker exception from broker-dealer registration requirements (17 CFR § 140.15a-7 (2003)). The blanket exception is currently in effect and will remain until the SEC issues final regulations regarding the GLBA broker exceptions. The SEC temporary bank exception for dealer activities expired because SEC has issued an effective final regulation.

OTS requested SEC to extend the same treatment to savings associations as banks to maintain regulatory uniformity. SEC has issued an interim final rule excepting savings associations from broker-dealer registration requirements “on the same terms and under the same conditions” as banks (17 CFR § 240.15a-9 (2003)). As a result of these SEC actions, savings associations and banks currently have the same temporary blanket exception from registration requirements for broker activities.

Until SEC issues final regulations regarding the GLBA broker exceptions and those regulations become effective, savings associations should continue to abide by the provisions in the Interagency Statement and the Chubb Letter.

On July 11, 2003, OTS issued CEO Memorandum No.178 regarding networking arrangements conducted through a service corporation.

Consistent with previous OTS policy, some savings associations set up service corporations to contract with a broker-dealer to offer nondeposit investment products and services. In July 2003, the SEC informed OTS that it is issuing deficiency letters to broker-dealers that have a networking contract with a service corporation of a savings association. The cause for the deficiency, under the Securities Exchange Act of 1934, is that the SEC considers a service corporation to be a broker itself when it contracts with a broker-dealer to offer nondeposit investment products and services to a savings association’s customers. As previously mentioned, the exception under Rule 15a-9 is a blanket exception

that would permit savings associations to directly contract with registered broker-dealers for networking arrangements without registering as a broker. This exception does not extend to service corporations, unless savings associations are required by law or regulation to conduct networking activities in a service corporation. Since OTS no longer requires the use of a service corporation to engage in networking arrangements with a broker-dealer, savings associations using a service corporation for networking arrangements should either:

- Replace the contract between the service corporation and the broker-dealer with a contract between the savings association and the broker-dealer; or
- Require the service corporation to register as a broker-dealer.

## TYPES OF NETWORKING ARRANGEMENTS

There are several types of networking arrangements. The simplicity or complexity of the arrangement depends on the needs of the savings association. The arrangements range from a minimal commitment such as a referral service, to the formation of a service corporation that registers with the SEC as a broker-dealer.

The following two networking arrangements are the most common:

- Referral
- Standard

### Referral Arrangement

This is an arrangement where the employees of the savings association simply refer customers that wish to discuss nondeposit investment products or services to a particular registered broker-dealer. They may provide customers with the broker-dealer’s promotional materials, direct them to telephones for placing orders, or provide a toll free telephone number. The calls would connect the customer with a broker-dealer that has an agreement with the savings association. There is a written agreement between the savings association and the broker-dealer that stipulates the percentage of the

gross commissions that the savings association will receive. Generally, with the referral arrangement, no sales occur on the premises of the savings association.

### Standard Networking Arrangements

The most common arrangement is for a savings association to enter into a networking agreement with a registered broker-dealer, which may be:

- An unaffiliated third party.
- A service corporation.
- An affiliate of the savings association.

In a standard networking arrangement, broker-dealers offer a range of investment products and services to a saving association's customers on the saving association's premises.

In a networking arrangement, the degree of the savings association's financial and managerial commitment and its level of profits will vary based on the following considerations:

- The structure of the networking arrangement.
- The products or services offered.
- The terms of the written agreement.

In these arrangements, the savings association makes available to the broker-dealer's registered representatives, a working area on the premises, telephones, and desk space. In return, the broker-dealer pays the savings association a fee based on all securities transactions that occur at or are attributable to activities conducted on the savings association's premises. This arrangement typically does not involve substantial upfront fees.

The broker-dealer employs or contracts with the registered representatives (individuals licensed to sell securities) and is fully responsible for all securities sales occurring through them. The broker-dealer recruits, screens, trains, and manages the sales force. Under some networking arrangements, registered representatives are dual employees of the savings association and the broker-dealer. When the dual employee is providing investment products and services, the broker-dealer is responsible for monitoring the registered representative's compliance

with applicable securities laws and regulations. When the dual employee is providing bank products or services, the savings association has the responsibility for monitoring the employee's performance. (Also, see Dual Employees in this Handbook Section.)

### *Brokerage Partners*

A savings association may enter into a networking arrangement with a broker-dealer that is affiliated with the savings association such as a service corporation or an affiliate, or with a nonaffiliated broker-dealer. There are additional considerations when the broker-dealer is an affiliate or a service corporation.

For instance, if the association filed an application, OTS may have imposed certain restrictions on the savings association and their broker-dealer or insurance affiliates or service corporations. You should review the Director's Order or application approval letter – if there is one – for any operating restrictions OTS imposed as a condition of approval. For example, an application to establish a broker-dealer subsidiary might have associated conditions. If there are conditions, you should review the savings association, the affiliate, or the service corporation's compliance with these conditions.

### Broker-Dealer is an Affiliate

Typically, in this kind of arrangement a securities affiliate has a mutual fund that they sell through the savings association. This is a proprietary fund. Characteristically, the fund name and the institution name are similar to the name of the holding company. For example, a hypothetical association called First Savings with a holding company called First Holding Company might offer a First Savings Growth Fund or a First Savings Capital Appreciation Fund. Some institutions market only their proprietary funds, while others offer both their own funds and funds sponsored by others. (See the section on Common Names later in this Section.)

The transaction with affiliate regulation applies if the broker-dealer is an affiliate (12 CFR § 563.41).

This regulation places certain restrictions on transactions between affiliated entities. See Thrift Activities Handbook Section 380 for a detailed description of the transaction with affiliates rules.

If the broker-dealer is an affiliate of a depository institution, the functional regulation provisions of GLBA also apply. GLBA established a framework of procedural requirements and criteria for working with functionally related entities, which may be a subsidiary or sister corporation engaged in activities regulated by another regulatory agency, such as the SEC. OTS will work cooperatively with the primary regulator of the affiliated broker-dealer to request information and reports. In limited circumstances, if the regulator is unable or unwilling to obtain the information, OTS can request the information directly from the entity. If the information is insufficient, OTS can, in some instances, conduct an on-site examination of the entity if OTS can meet certain requirements showing OTS' need for the information.

#### Broker-Dealer is a Service Corporation

If the broker-dealer is a service corporation of the savings association, you should follow the examination procedures outlined in Section 730, "Related Organizations," of the Thrift Activities Handbook and observe the functional regulation requirements of GLBA.

#### Sale of Association or Affiliate's Stock Including Unsolicited Sales in a Networking Arrangement

OTS regulations at 12 CFR § 563.76 generally prohibit most on-premises offers or sales of a savings association's or its affiliate's securities. The prohibition applies to offers or sales made through a networking arrangement. See the definition of "affiliate" in 12 CFR § 561.4.

OTS issued TB 23a, "Sales of Securities" on June 23, 1993. TB 23a lists exceptions for the on-premises sales of a savings association's or its affiliate's equity securities, provided that the permitted offers and sales are conducted in a safe and sound manner.

TB 23a states that OTS will not treat as an affiliate, any investment company (mutual fund) that a

savings association, its holding company, or a subsidiary of the holding company sponsors, advises, distributes, or administers. A common name for these mutual funds is proprietary mutual funds. TB 23a requires, however, that sales of these mutual fund shares must comply with the safeguards established in § 563.76 and TB 23a.

One of the safeguards established in § 563.76 and TB 23a is that only registered representatives subject to supervision by a registered broker-dealer may make sales unless certain SEC exceptions apply, such as the exception at 17 CFR § 240.3a4-1. Section 563.76 also requires that the savings association (or an affiliate) may not pay any commissions, bonuses, or comparable incentive compensation to its employees in connection with the on-premises sales of its securities. Registered broker-dealers, however, may pay registered representatives compensation consistent with industry norms. The regulation also requires that customers must certify in writing that they have received specific disclosures on the nature of the securities they are buying.

The Chubb Letter discusses the purchase or sale of the securities of financial institutions (which includes savings associations) in networking arrangements. The Chubb Letter only permits broker-dealers to execute a customer's unsolicited transaction in equity securities of the financial institution or its affiliates. The customer must sign an affidavit affirming that the transaction was effected on an unsolicited basis and that the customer has been informed that the securities are not insured by the financial institution, its affiliates, the FDIC, or any other state or federal deposit guarantee fund relating to financial institutions. Another term for unsolicited transactions is "order taking." The Chubb Letter does not permit broker-dealers to discuss the purchase or sale of debt securities of the financial institution or its affiliates, on an unsolicited basis or otherwise, on any part of the premises of the financial institution that is generally accessible to the public.

Until the SEC issues final regulations on brokerage activities under GLBA and those regulations become effective, savings associations should continue to abide by the provisions in the Chubb Letter.

## DESCRIPTION OF SECURITIES BROKERAGE BUSINESS

A detailed discussion of the securities brokerage business and its complex regulatory environment is beyond the scope of this Section. However, the following general information may be pertinent to your exam of the networking arrangement.

### Securities Brokerage Regulators

The SEC regulates securities transactions at the federal level and states regulate securities transactions at the local level. State laws may vary in scope, but apply to activities and products transacted within their borders. Broker-dealers must register with the SEC generally and must comply with registration requirements of the states and the National Association of Securities Dealers (NASD). NASD requires registration for both the broker-dealer and the individuals associated with the firm.

#### *National Association of Securities Dealers*

The NASD is a self-regulated entity. It establishes member qualifications, tests, and licenses individuals. NASD maintains Rules of Fair Practice and enforces compliance with securities laws and its own rules (subject to SEC review). Under NASD Rule 1031, all persons associated with a member broker-dealer, who are engaged in the securities business for the member broker-dealer are designated as representatives that must be registered with the NASD. The term “associated person” includes securities professionals that are employees of the broker-dealer, independent contractors working with a broker-dealer, and dual employees of the broker-dealer and the savings association.

#### NASD Requirements

The registration application requires information about the individual’s prior employment and disciplinary history. The NASD prescribes two levels of registration for individuals:

- Registered representatives, generally sales personnel.
- Principals, generally officers of the firm and other management personnel actively involved

with the day-to-day operation of the firm’s securities business.

A prerequisite for a broker-dealer to register with the NASD is for each individual associated with the broker-dealer to have successfully completed each required qualification examination. NASD determines which examinations to require based upon the individual’s position within the broker-dealer. Only individuals that are sponsored by a current broker-dealer member may take a qualification examination to receive a license. When a person has previously passed a qualification exam and has registered with a member broker-dealer firm within the previous two years, NASD does not require additional qualification examinations to continue functioning in the same capacity.

The most common NASD licenses are:

- Series 24 – General Securities Principal. This license authorizes the individual to supervise all sales personnel.
- Series 11 – Assistant Representative. This license authorizes the individual to take and enter unsolicited orders, but they cannot determine suitability or provide investment recommendations.
- Series 7 – General Securities Representative. This license authorizes the individual to sell all securities except commodities.
- Series 6 – Investment Company Products and Variable Contracts Limited Representative. This license authorizes the individual to sell only mutual funds and variable annuities.

#### *Securities and Exchange Commission*

Congress created the SEC to protect investors, maintain fair and orderly securities markets, and enforce federal securities laws. The SEC requires that an issuer provide adequate, relevant information to enable a potential buyer to make an informed decision regarding the purchase. Additionally, state laws generally require that issuers register with, or gain approval from state authorities. Federal and state laws also include provisions that address manipulation of securities trading markets. These laws apply to, among other things, insider trading based

on nonpublic information and actions and statements by management designed to deceive others.

### SEC Requirements

Since broker-dealers maintain custody of the funds and securities of their clients, the SEC requires that they show evidence of financial responsibility. Broker-dealers must establish mechanisms for customers to recover funds should the broker-dealer become insolvent or otherwise unable to meet its responsibilities. Three principal mechanisms permit broker-dealers to show evidence of financial responsibility:

**Net Capital Rules** – These rules require broker-dealers to maintain certain levels of capital. These levels generally depend on the activities in which they engage. The broker-dealer must carry its assets at fair market value, which is determined every business day.

**Handling of Customer Funds** – Broker-dealers must comply with requirements for segregation of customer funds and securities. Thus, broker-dealers must implement adequate measures to separately maintain client and broker funds and securities.

**Maintenance of Industry-Wide Protective Fund** – The Securities Investor Protection Corporation (SIPC) is responsible for the oversight of this fund. The purpose of the fund is to satisfy claims of customers if a brokerage firm becomes insolvent, but does not apply to losses that result from investment risk. Members maintain this fund through assessments. The SIPC may borrow funds from the United States Treasury if assessments are insufficient to cover its obligations.

### **Regulatory Coordination**

OTS generally does not examine registered broker-dealers. The NASD, SEC, and state authorities regularly examine broker-dealers to determine if they comply with securities rules and regulations. The extent to which a brokerage operation complies with securities laws, rules, and regulations can materially affect the broker-dealer's viability and the public's overall perception of the savings association.

The oversight of brokerage firms by securities regulators provides important information in determining the appropriate examination scope of the networking arrangement. For this reason, OTS and the other banking agencies signed an information sharing agreement with the NASD on January 3, 1995. The agreement seeks to eliminate duplication of effort and regulatory overlap through the sharing of examination schedules and examination information. The agreement covers situations where the broker-dealer is an affiliate of the savings association and when the broker-dealer is not an affiliate.

When the broker-dealer is an affiliate, the agreement states that OTS and NASD will share examination schedules and where appropriate, coordinate both agencies' examinations. The two agencies have also agreed to share information and allow access to examination related work papers. Under the agreement, where the broker-dealer is not an affiliate, OTS may, in connection with an examination of a savings association, request from NASD information concerning the most recent examination results of the broker-dealer if OTS believes that such information may facilitate its supervision of the savings association. Each Regional office must contact the appropriate NASD offices and set up procedures to implement the information sharing agreement so that the agencies exchange appropriate examination information and can make referrals regarding any violations of securities laws or other supervisory concerns. See Appendix E, Agreement In Principle.

### **How Securities are Sold**

Investors buy and sell securities in the United States in two primary markets: the over-the-counter (OTC) market and stock exchanges. The OTC market consists of a nationwide network of brokers and dealers who buy and sell stocks and bonds to and from each other and to and from customers. While brokers conduct transactions in securities for the accounts of others, dealers engage in the business of buying and selling securities for their own account. The term broker-dealer describes an entity that engages in either activity. A principal is an officer or partner of a brokerage firm who is responsible for a certain functional area. Different authorities call sales persons employed by broker-dealers different names. A registered representative

is the term at the federal level and an agent is the term at the state level. Representatives and agents must obtain licenses according to applicable federal and state laws.

### Types of Brokerage Services

Brokers provide either discount or full brokerage services. A discount brokerage operation takes customer orders to buy or sell securities. It offers no investment advice and makes no margin loans (loans that permit securities trades on credit with a deposit maintained in a customer account). A full-service broker-dealer offers comprehensive services including investment advice and margin loans along with a full range of investment products.

The two major types of brokerage transactions are agency and principal. The most common type of transaction conducted on the premises of a savings association is an agency transaction in which the broker-dealer acts on behalf of the customer and receives commissions. A principal transaction occurs when the broker-dealer trades securities for its own account.

Broker-dealers may provide either individualized or standard investment advice. Individual advisory services generally involve the assessment, by a registered representative, of a customer's financial condition, investment goals, and other factors to recommend the appropriate mix of investments for the client. Standardized investment advisory services may entail providing one of several categories of advice to an investor based on a determination of what is suitable given that person's financial status and goals. Such services might include purchase and sale recommendations derived from an independent advisory service or from the principals of the brokerage firm.

### RISKS ASSOCIATED WITH NETWORKING ARRANGEMENTS

Networking arrangements present certain potential risks to savings associations. You should determine whether the savings association is appropriately identifying, measuring, monitoring, and controlling the risks associated with the networking arrangement.

The risks are as follows:

- Losses through customer litigation over actions of the broker-dealer.

There is a risk that customers will not fully understand that the FDIC does not insure nondeposit investment products. There is also the risk that customers may think that nondeposit investment products are deposits or other obligations of the savings association. As a result, the savings association may be held liable in litigation due to failure of the registered broker-dealer to provide customer disclosures or if the broker-dealer engages in unsuitable sales practices. One way to mitigate the risk of customer confusion is for the broker-dealer to operate in a manner that insulates the savings association from potential liability under the anti-fraud provisions of the federal securities laws (Section 10(b) of the Securities Exchange Act and Rule 10b-5). The anti-fraud provisions prohibit materially misleading or inaccurate representations in connection with the sale of securities.

- Inventory risk.

The risk that the securities will be stolen or lost. This is not a major concern as the majority of securities are traded electronically through the Depository Trust Company. There are very few actual paper securities left in circulation. Systems should be in place, however, to ensure that the broker-dealer takes appropriate safety measures for the safekeeping and the transportation of securities.

- Loss of deposits and costs associated with the networking arrangement.

The savings association may minimize its overall exposure to this risk by monitoring the networking arrangement's income, expenses, and effect on deposits.

Your examination of the networking arrangement will focus on two main points:

- To determine the adequacy of the savings association's internal controls for identifying, measuring, monitoring, and controlling the risks presented to the savings association.



- To determine whether the networking arrangement does an effective job of minimizing potential customer confusion between FDIC-insured and non-FDIC insured investment products.

There are a number of ways that savings associations with networking arrangements can minimize their overall exposure to risk by observing certain safeguards:

- Conducting appropriate review of the broker-dealer before entering into an arrangement and on a periodic basis throughout the relationship.
- Taking appropriate measures to ensure that customers clearly understand the differences between insured deposits and nondeposit investment products and receive, at least, the minimum disclosures both orally during sales presentations (including telemarketing) and in writing. Also, see Disclosures in this Handbook Section.
- Acting appropriately to ensure that customers clearly understand that nondeposit investment products and services are subject to investment risks, including possible loss of the principal invested. Also, see Disclosures in this Handbook Section.
- Written agreements with the broker-dealer that require indemnification provisions and other protections. Also, see Written Agreements with broker-dealers in this Handbook Section.
- Contingency planning if the broker-dealer is unable to perform in accordance with the agreement.
- Oversight by management and the board of directors to ensure an operating environment that fosters consumer protection in all facets of the networking arrangement.
- Effective compliance and audit programs for the networking arrangement.
- Blanket bond coverage.

## RISK MANAGEMENT FOR NETWORKING ARRANGEMENTS

### Introduction

The following information covers the various safeguards and regulatory requirements associated with the conduct of a safe and sound networking arrangement. Much of this supervisory guidance is in the Interagency Statement jointly issued by the four federal regulatory agencies (OTS, OCC, FDIC and FRB) on February 15, 1994. This Interagency Statement applies to all third party brokerage arrangements. The banking agencies developed the Interagency Statement to offer financial institutions uniform guidance on how to operate nondeposit investment product programs in a safe and sound manner while reducing customer confusion.

Currently, savings associations must also comply with the SEC's policy on networking arrangements as set forth in the Chubb Letter. This is a comprehensive no-action letter, Re: Chubb Securities Corporation dated November 4, 1993. (See Appendix C.) OTS, as a policy matter, is applying these restrictions to savings associations that choose to offer nondeposit investment products and services to their customers.

The Interagency Statement applies to the sale of stocks, mutual funds, and variable rate annuities. The Interagency Statement also covers hybrid accounts, such as sweep accounts, retail purchase agreements, and stock-indexed CDs that combine attributes of both insured deposits and nondeposit investment products.

The Interagency Statement does not apply to the following types of sales or products:

- Sales of nondeposit investment products to non-retail customers, such as sales to institutional customers and fiduciary accounts administered by the savings association.
- Sales of government or municipal securities away from the lobby area.
- Insurance products that do not have an investment component such as credit life insurance.
- Traditional savings instruments such as savings bonds.

The Interagency Statement generally applies to sales using electronic media such as telephones and the Internet.

The Chubb letter contains restrictions regarding referral fee programs. Until the SEC issues final regulations on brokerage activities under GLBA and those regulations become effective, savings associations should continue to abide by the provisions in the Chubb Letter. Supervisory guidance is also in TB 82, Third Party Arrangements. This document provides general guidance on third party arrangements, whether they occur between affiliated or unaffiliated entities. OTS expects directors and management to effectively manage risks that arise from all third party arrangements, including networking arrangements with broker-dealers.

### Internal Controls

Management and the board of directors must establish a system of internal controls to ensure that the networking arrangement complies with applicable regulatory requirements and restrictions, and is consistent with stated management strategies and objectives as well as the savings association's business plan.

Management must be able to demonstrate to OTS examiners that internal controls are adequate to monitor and assess the broker-dealer's compliance with written agreements, applicable law, and OTS supervisory guidance.

After the savings association enters into a networking arrangement, the board of directors and management should periodically review the arrangement.

The savings association's internal controls should describe the types of reports that the broker-dealer must provide to management on a routine basis.

Required reports should include the following information:

- New account activity for each registered representative;
- Customer complaints;

- Findings contained in the broker-dealer's internal audit, external audit, or compliance report; and
- Sales activity exception reports that flag potential concerns regarding limits exceeded or unusual patterns or trends.

### Weblinking

The OTS, along with the FDIC, OCC, and the NCUA, on April 23, 2003, issued Interagency Guidance on Weblinking: Identifying Risks and Risk Management Techniques. (See Thrift Bulletin 83.)

While weblinks are a convenient and accepted tool in website design, their use can present certain risks. Generally, the primary risk posed by weblinking is that viewers can become confused about whose website they are viewing and who is responsible for the information, products, and services available through that website.

The purpose of the Weblinking guidance is to assist financial institutions in identifying risks posed by the use of weblinks on their websites and to suggest a variety of risk management techniques institutions should consider using to mitigate these risks. The guidance applies to institutions that develop and maintain their own websites, as well as institutions that use third-party service providers for this function.

### Written Statement

Management of the savings association should adopt a written statement that addresses the risks associated with the arrangement and that contains a summary of policies and procedures instituted to address these risks. The statement should address the scope of the broker-dealer activities and the association's compliance program to monitor these activities. The savings association's board of directors should adopt and periodically review the written statement.

### Policies and Procedures

The savings association's policies and procedures, at a minimum, should incorporate the safeguards in the Interagency Statement. The level of detail nec-

essary in a savings association's policies and procedures will depend on the structure and complexity of the networking arrangement. Savings associations' policies and procedures should address the following areas:

- Compliance procedures.
- Supervision of personnel involved in sales.
- Types of products sold.
- Permissible use of customer information.
- Designation of employees to sell investment products.
- Disclosures and advertising.
- Setting and circumstances of sales activity.
- Qualifications and training.
- Compensation.

#### Review of the Broker-Dealer

The savings association should, before entering into an arrangement, conduct an appropriate review of the broker-dealer. The review should include an assessment of the broker-dealer's financial status, management experience, reputation, and ability to fulfill its contractual obligations to the savings association, including compliance with all applicable OTS regulations and policies.

Personnel with appropriate knowledge, experience, and analytical skills should perform the evaluation. The files should document management's review of the broker-dealer. Documentation of the broker-dealer review should include:

- A description of the services and investment products offered;
- The broker-dealer's competence and experience;
- The broker-dealer's financial condition through its most recently audited financial statement and annual report;
- The broker-dealer's business reputation, complaints, and litigation past and pending;
- Qualifications and training of the broker-dealer's staff members;

- The broker-dealer's internal and external audit and compliance reports;
- The broker-dealer's information and reporting system including its ability and willingness to deliver reports to the savings association regarding the networking arrangement;
- The broker-dealer's contingency and recovery plan; and
- The broker-dealer's insurance coverage, which should include fidelity bond coverage for losses attributable to dishonest acts and liability coverage for losses attributable to negligent acts.

Management of the savings association must make reasonable efforts to ensure that the broker-dealer continues to be an appropriate partner in the networking arrangement. Such efforts should include ongoing review of information regarding the broker-dealer, such as the following:

- NASD and SEC regulatory reports or deficiency letters.
- Industry ratings.
- Financial statements
- Third-party audit reports.
- Other appropriate material such as customer complaints, and customer satisfaction surveys.

In addition, management should monitor the broker-dealer's personnel changes. High turnover of employees may indicate problems. Management must address and resolve any material problems uncovered through a periodic review of the broker-dealer.

#### Written Agreements with Broker-Dealers

The savings association's files should contain adequate documentation regarding the arrangement with the broker-dealer. A review of the agreements and records pertaining to the networking arrangement should provide an overview of the networking arrangement and reveal potential areas of risk that require further evaluation. Written agreements should sufficiently delineate all facets of the arrangement. The board of directors should approve the agreement. The savings association's senior management should periodically monitor compliance with the agreement. Any agreement should

contain language that fully indemnifies the savings association from liability attributable to the negligence, recklessness, or intentional misconduct of the broker-dealer or its employees (independent contractors). If the arrangement includes dual employees, the agreement must provide for written employment contracts that specify the duties of such employees and their compensation arrangements.

The agreement between the broker-dealer and the savings association should include the following:

- The duties and responsibilities of each party to the agreement including the provision of regular reports from the broker-dealer to the savings association regarding, for each registered representative involved in the networking arrangement, account openings, transactions, disciplinary history, and customer complaints.
- A description of permissible activities by the broker-dealer on the premises of the savings association.
- A description of the broker-dealer's internal controls that will ensure compliance with applicable laws, regulations, and OTS policy statements with a particular focus on ensuring that registered representatives are complying with customer suitability standards. (See previous discussion on review of internal controls in this Handbook Section.)
- The defined terms of the broker-dealer's use of the savings association's space, personnel, and equipment.
- The types of investment products and services to be provided and related restrictions.
- Insurance requirements.
- An assurance that the broker-dealer will not disclose or use the savings association customer's personal information for any purpose other than to offer investment products or services to those customers.
- The broker-dealer's authorization of the savings association and OTS to have access to its premises, personnel, and records as are necessary or appropriate to evaluate compliance with the terms of the agreement. These records should include SEC and NASD examination reports,

sales-practice reviews, and any correspondence provided to the broker-dealer by its regulatory authorities.

- A description of the compensation arrangements of the registered representatives involved in the networking arrangement.

### Supervision of Personnel Involved in Sales

The savings association's policies and procedures should designate, by title or name, the individuals responsible for supervising referral activities initiated by savings association employees not authorized to sell investment products. They also should include standards pertaining to such customer referrals. OTS, under the Chubb letter, allows tellers and other employees to refer customers to registered representatives employed by the broker-dealer.

Designated supervisory personnel should also be responsible for monitoring compliance with the agreement between the savings association and the broker-dealer, as well as compliance with the Interagency Statement and any other applicable laws or guidelines. Supervisory duties should also include surveying customer satisfaction through questionnaires, evaluating the nature of any customer complaints, and reviewing any disciplinary actions initiated by the NASD or the SEC.

### Dual Employees

Networking arrangements between the savings association and a broker-dealer may include dual employees. The savings association and the broker-dealer both employ these individuals. In some cases, instead of being an employee, the individual may be an independent contractor associated with the broker-dealer. They are registered representatives so they may sell nondeposit investment products on behalf of the broker-dealer. The broker-dealer must control, properly supervise, and be responsible for dual employees when they are acting in their registered representative capacity. The potential for customer confusion increases when dual employees have customer contact on behalf of both the savings association and the broker-dealer. Thus, additional safeguards are appropriate to address such risk.

### Types of Products Sold

The savings association's board should carefully evaluate and decide on the types of investment products that the association should offer through the networking arrangement. An association can limit risk exposure by not offering highly speculative investment products such as limited partnerships, real estate partnerships, high-yield/low rated bonds. If the association offers high-risk products, it must ensure that the broker-dealer employs appropriate safeguards to ensure that customers are aware of the financial risks of these types of investments. The safeguards include oral and written disclosures, and product suitability standards.

### Sharing of Customer Information

The savings association's employee training materials should describe the networking arrangement's procedures on the appropriate use of customer information. In addition, the written agreement between the broker-dealer and the savings association should specifically identify which employees may use the information. These materials should address specific steps for minimizing customer confusion when registered representatives use the information to contact savings association customers.

The extent to which a savings association may make its customer information available to the broker-dealer depends on whether the recipient of the information is affiliated or nonaffiliated. The answer will define the limits of what information the association can and cannot share and the ability of the individual customer to allow the sharing or to "opt out."

#### *Sharing with Nonaffiliates*

Title V of GLBA, captioned "Privacy" and Subtitle A, "Disclosure of Nonpublic Personal Information," establishes the first comprehensive legislative effort to limit a financial institution's use of consumers' personal information. In brief, Title V prohibits a financial institution from disclosing "nonpublic personal information" about a consumer to nonaffiliated third parties, subject to certain exceptions, unless the institution satisfies various

notice and opt-out requirements, and if the consumer has not elected to opt out of the disclosure. OTS has issued regulations at 12 CFR Part 573 to implement the statutory provisions for its institutions. You should refer to OTS' Compliance Activities Handbook Section 375 for additional guidance.

When a savings association enters into a contract with a broker-dealer that is not an affiliate, it must be careful to abide by the privacy requirements of GLBA and OTS' implementing regulations. Under the privacy provisions, the savings association must provide its customers with a "clear and conspicuous" notice that describes the types and sources of information collected and shared, among other elements. Additionally, the institution must provide the customer with a reasonable means and opportunity to opt out or disallow any disclosure of their non-public personal information to the nonaffiliated broker-dealer, unless an exception applies. (See 12 CFR §§ 573.13, 573.14 and 573.15.)

Section 573.13 is likely to be of particular relevance for savings associations seeking a business relationship with a nonaffiliated broker-dealer. This section allows an exception to the opt out right (but *not* to the notice requirement) for service provider relationships and for joint marketing agreements. This section specifically permits a savings association to disclose nonpublic personal information about its customers to the nonaffiliated broker-dealer without providing the customer an opportunity to opt out if the association meets three requirements:

- The broker-dealer must market financial products or services offered under a joint agreement between the savings association and the broker-dealer. The joint agreement must be a written agreement under which the savings association and the broker-dealer "jointly offer, endorse, or sponsor" a financial product or service. For example, an agreement that allows the broker-dealer to offer investment products and services on the premises of the savings association would demonstrate a joint offering, endorsement, or sponsorship.
- The savings association must have provided its customers with an initial privacy notice that in-

cludes a description of the joint marketing arrangement.

- The written agreement between the savings association and the broker-dealer must restrict the broker-dealer from disclosing or using the savings association customer's personal information for any purpose other than to offer investment products or services to those customers.

#### *Sharing Information with Affiliates*

There is no exact parallel to the GLBA Privacy Regulation for affiliate sharing. However, the Fair Credit Reporting Act (FCRA) addresses affiliate sharing for certain types of customer information and mandates a notice and opt out opportunity, much like that in GLBA. In addition, the recently adopted Fair and Accurate Credit Transactions Act of 2003 (FACTA) limits the use of customer information permissibly shared under FCRA among affiliates.

The FCRA provides the framework under which savings associations are permitted to share consumer information among their affiliates without incurring the obligations of consumer reporting agencies. Specifically, these provisions authorize savings associations to communicate to and among their affiliates (i) information as to their "transactions or experiences" with the consumer and (ii) "other" information (i.e. information covered by the FCRA but not transaction or experience information), provided that the association has given notice to the consumer that the "other" information may be communicated and has furnished the consumer with an opportunity to "opt out," and the consumer has not opted out.

The term "transaction and experience" information includes firsthand information gleaned from the account relationship with the customer over time. Examples might include a history of late payments, exceeding credit limits, the number and amount of deposits and withdrawals, the average monthly balance, and many others. For transaction and experience information, a financial institution is not required to provide notice or to seek the customer's consent; this information can flow freely to affiliates – although its use for marketing purposes has been restricted by FACTA as explained below.

The term "other" information refers to information that is covered by the FCRA and that does not relate to transaction or experiences between the consumer and the person making the communication. In the case of "other" information, the savings association must provide a notice to the customer and must allow the individual an opportunity to opt out prior to commencement of this sharing. The types of information covered by this category include credit reports, applications, and outside sources, such as verifications of employment history.

#### *Using Affiliate Information for Solicitation*

Even if affiliates share information according to the requirements described above, new regulatory limitations will apply to the use of that information in accordance with the FACTA. This limitation will apply whether the information derives from transactions and experience or other sources. Generally, the new limitation prevents the affiliate receiving the information from using that information to make a solicitation for marketing purposes to the consumer about the receiving affiliate's products or services, unless the consumer is first given notice and a simple means of opting out of such a marketing solicitation. Exceptions to this limitation are contained in the statute and will be part of implementing rules to be promulgated in the second half of 2004. For instance, under FACTA, the solicitation use limit does not apply to a person who uses affiliate information to solicit consumers with whom it has an existing business relationship.

#### **Designation of Employees to Sell Investment Products**

Management must provide a description of the responsibilities of those personnel authorized to sell nondeposit investment products as well as other personnel who may have contact with retail customers.

The savings association's policies and procedures, as well as employee training materials, should carefully detail the activities restrictions and responsibilities that apply to dual employees. For example, dual employees should not, while located in routine deposit-taking areas (specifically teller windows), make general or specific recommenda-

tions regarding investment products, or accept any orders for such products.

#### *Nonregistered Employees*

Employees of the savings association that are not dual employees may not engage in any securities or investment related activities other than providing clerical and ministerial assistance unless an SEC exception, such as the exception at 17 CFR § 240.3a4-1 is met. This means nonregistered employees may not perform any of the following tasks:

- Accept or deliver money or securities.
- Recommend any security or give any form of investment advice.
- Describe investment vehicles such as mutual funds.
- Discuss the merits of any security or type of security with a customer.
- Handle any question that might require familiarity with the securities industry or the exercise of judgment regarding securities and investment alternatives.
- Take orders to execute securities transactions.

Savings association employees may, in accordance with the savings association's policies, refer customers to registered representatives who may assist customers interested in securities sales.

#### **Disclosures and Advertising**

The savings association's management must ensure that oral and written disclosures to customers purchasing nondeposit investment products are clear, conspicuous, and effective in minimizing customer confusion. Such disclosures must fully distinguish between the following:

- Uninsured investment products from insured savings association deposits.
- Brokerage services from deposit-taking functions of the savings association.
- Investment product or service is subject to investment risks, including possible loss of the principal amount invested.

#### *Content and Form of Disclosure*

Registered representatives, when selling or recommending investment products must provide to customers the following minimum disclosures:

- The FDIC does not insure investment products.
- Investment products are not deposits or other obligations of the association and are not guaranteed by the savings association.
- Investment products are subject to risks, including possible loss of the principal amount invested.

#### *Placement of Disclosures*

Policies and procedures should ensure that required disclosures are conspicuous in all advertisements, sales presentations, or other information such as brochures pertaining to the features of investment products. Disclosures should generally be on the front of a brochure, in the top portion of any text regarding investment products, and at the beginning of sales presentations, customer referrals, or solicitations. The disclosures must be conspicuous (highlighted through bolding, boxes, or a larger typeface) and presented in a clear and concise manner.

#### *Timing of Disclosure*

The savings association should ensure that the broker-dealer's registered representatives provide the minimum disclosures to all customers in the following form at the following times:

- Orally during any sales presentation.
- Orally when the registered representative provides investment advice concerning nondeposit investment products.
- Orally and in writing before or at the time the customer opens an investment account.
- In advertisements and other promotional materials, as described below.

#### *Signed Certification*

When a customer opens an investment account, the registered representative should obtain a signed cer-

tification in which the customer acknowledges receipt and understanding of the required disclosures.

The association may make the minimum disclosures on a customer account agreement or on a separate disclosure form. Disclosures contained directly on a customer account agreement should be located on the front of the agreement or adjacent to the customer signature block. If the savings association and the broker-dealer send joint customer account statements, the information concerning the nondeposit investment products must be clearly separate from the information regarding deposit account activity and should be introduced with the required minimum disclosures as stated above. In addition, the identity of the broker-dealer must be included.

### **Advertisements and Other Promotional Material**

Advertising and other promotional materials must clearly distinguish the savings association's depository functions from nondeposit investment products and must comply with the following standards:

- Includes the minimum disclosures.
- Does not confuse transactions executed and investment advice provided through the networking arrangement with federally insured deposits.
- Clearly states the name of the broker-dealer that is involved in the networking arrangement.
- Does not omit material facts or mislead customers regarding the characteristics of, and risks associated with, particular investment products.

For additional information regarding OTS regulations on advertising, see Compliance Activities Regulatory Handbook Section 425, Advertising.

### *Logo Disclosures*

In accordance with TB 23-3, savings associations may use shorter, logo form disclosures in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials such as brochures. Savings associations may not use logo disclosures in the written acknowledgment forms that custom-

ers sign. The text of an acceptable logo format disclosure must include the following statements:

- Not FDIC insured
- No Bank Guarantee
- May Lose Value

Savings associations must display logo format disclosures conspicuously, in a box, and set them in bold face type.

### *Where No Disclosures Are Required*

TB 23-3 does not require minimum disclosures under the following circumstances:

- Radio broadcasts of 30 seconds or less.
- Electronic signs (does not include TV, Internet, or ATMs).
- Signs, such as banners and posters, when used only as location indicators.

Displays of promotional sales material related to the networking arrangement in the savings association's retail area should be separate from material related to insured products. Associations may place sales material in the securities sales area or at branch entrances.

### *Additional Disclosures*

Savings associations should ensure that registered representatives are providing customers with written disclosures regarding any fees, penalties, or surrender charges associated with investment products. Associations should also ensure that customers receive written disclosures, in a prospectus or otherwise, regarding the existence of an advisory or other material relationship between the savings association and its affiliates. Examples of relationships that need to be disclosed are when the savings association, or an affiliate, is the investment advisor for mutual funds that are being sold by the broker-dealer (proprietary mutual funds) or when the broker-dealer in the networking arrangement is an affiliate of the savings association. The registered representative should make these disclosures before a customer opens an investment account, or at the time a customer opens an investment account.



The potential for customer confusion also increases when registered representatives, through investment sales presentations or materials, reference insurance coverage provided by an entity other than the FDIC. Most commonly, this will be the SIPC, state funds, or private companies. Such references must include a clear explanation of the distinctions between such insurance coverage and FDIC deposit insurance. Savings associations should ensure that all employees having customer contact receive adequate training on relevant insurance coverage.

#### *Common Names and SEC Policy*

Prospective nondeposit investment customers tend to associate the name and logo of a savings association with the federal insurance that protects their deposits against loss. When the name of any nondeposit investment product (such as a mutual fund) is similar to that of the savings association, unsophisticated customers may assume that the investment products are federally insured. For this reason the SEC presumes that similar names promote customer confusion. If one of the products offered to savings association's customers is a mutual fund that has in common the name of the savings association, there must be a prominent disclosure. This disclosure must be on the cover page of the prospectus of the mutual fund stating the shares are not federally insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other banking agency. (See Appendix D, SEC Policy on Bank and Mutual Fund Names.)

#### **Setting and Circumstances**

Savings associations must ensure that the networking arrangement can be clearly distinguished from the savings association's banking operations to minimize any potential customer confusion. It should be obvious to the casual observer that the broker-dealer, not the savings association, is offering the nondeposit investment products and services.

The following practices will ensure that the investment sales area is distinct and that sales literature and materials do not convey any inaccurate or misleading impressions about the networking

arrangement. Savings associations should implement these practices:

- The area where the broker-dealer offers nondeposit investment products should be physically separate from teller windows and desks where retail deposit-taking activities take place.
- Information on investment products or services should be separate from material pertaining to banking products.
- Signs and literature should clearly state that investment products are not FDIC-insured.
- Statements provided to customers that contain deposit and securities information should clearly separate the information and include the required minimum disclosures.
- Under no circumstances should any employee, while located in routine deposit-taking areas such as teller windows, make general or specific recommendations regarding investment products or accept orders for such products.

#### **Qualifications and Training**

In addition to monitoring the networking arrangement, savings association management can minimize exposure to loss by adequately training its own employees. The savings association's policies and procedures should establish training programs for nonregistered savings association employees on how to make proper referrals and for dual employees on how to determine when the employee is acting on behalf of the savings association and when on behalf of the broker-dealer. Savings association management should also ensure that registered representatives meet the qualifications and training required by securities regulators and that they have obtained adequate training in the following areas:

- Products in the networking arrangement.
- Internal policies and procedures of the savings association.
- OTS requirements and restrictions.

The training materials for registered representatives should set forth limitations on their authority, OTS required disclosures, and customer suitability standards.

**Suitability and Sales Practices**

The broker-dealer must comply with suitability standards and other related customer protection practices established by SEC and NASD regulations and guidelines. These standards provide that sales representatives should have reasonable grounds for recommending that a certain investment product is suitable for a particular customer. In addition, the sales representative must believe that the customer is reasonably able to evaluate the financial risks associated with an investment recommendation. Registered representatives should document the customer's information such as income, tax status, age, and investment objectives that form the basis for recommending particular investments in the broker-dealer's files, and update them periodically.

*Unsolicited Transactions*

Unsolicited transactions occur when customers direct the registered representative to initiate securities transactions that the registered representative did not recommend or suggest. Suitability standards are less stringent for unsolicited transactions and discount brokerage operations.

Regardless, the customer must acknowledge receipt of the minimum disclosures. In addition, the broker-dealer should retain documentation that shows the registered representative did not solicit the sale, that the customer requested the transaction, and that the customer did not rely on a registered representative's recommendation.

**Compensation**

The structure of the broker-dealer's compensation program (which typically includes incentive compensation such as commissions) for registered representatives, including dual employees, should be structured to minimize the potential for abusive practices, unsuitable recommendations, improper sales, or unnecessary transactions. Incentive compensation may result in aggressive sales practices. Savings association management should monitor, via reports from the broker-dealer, the sales activity for each registered representative to determine any patterns. For example, concentrations in the types of products sold may indicate that sales representa-

tives are making recommendations based on incentive compensation.

Savings associations should review the broker-dealer's compensation program and employment contracts for dual employees involved in the networking arrangement. For convenience with respect to tax and social security withholding, health, retirement, and other benefits, transaction-related compensation may be paid to dual employees by the savings association, provided it is clear that such payments are made on behalf of the broker-dealer from funds allocated by the broker-dealer for payment of dual employees.

Tellers and other savings association employees that are not registered representatives may receive fees for referring customers to the securities sales force; however, savings associations can only pay a one-time nominal fee for each referral. Payment of the fee cannot be dependent on whether or not a sale results.

**REFERENCES****United States Code (12 USC)**

§1464(c)(4)(B)	Service Corporations
§1468(a)	Affiliate Transactions
§1468a	Advertising
§1831e	Activities of Savings Associations

**OTS Rules and Regulations**

§561.4	Affiliate
§563.41	Loans and Other Transactions with Affiliates and Subsidiaries
§563.76	Offers and Sales of Securities at an Office of a Savings Association
§573	Privacy of Consumer Financial Information

**OTS Bulletins and Memoranda**

TB 23a	Sales of Securities
TB 23-2	Interagency Statement on Retail Sales of Nondeposit Investment Products

TB 23-3	Joint Interpretations of the Inter-agency Statement on Retail Sales of Nondeposit Investment Products
TB 82	Third Party Arrangements
TB 83	Interagency Guidance on Weblinking: Identifying Risks and Risk Management Techniques
CEO Memo 178	Networking Arrangements (July 11, 2003)

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# Networking Arrangements Program

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## Examination Objectives

To assess the adequacy of the savings association's policies and procedures and oversight by management and the board of directors to ensure that customers clearly understand the differences between insured deposits and nondeposit investment products.

To determine the effectiveness of the savings association's compliance and audit programs to ensure that the savings association conducts the networking arrangement in compliance with the Interagency Statement, the Chubb Letter, other OTS guidelines, and applicable law.

To determine whether the savings association monitors the networking arrangement's effect on the saving association's income, expenses, and deposits and takes appropriate action when necessary.

To obtain commitments for corrective action when policies, procedures, practices, or management oversight is deficient or the association has failed to comply with the interagency statement, OTS practices, or applicable law.

## Examination Procedures

The extent to which you will perform procedures depends on a number of factors. These factors include:

- Types of sales activity.
- Specific product offered.
- Size and complexity of the operation.
- Any relationships with affiliates or third parties and the savings association.

## Pre-Examination Analysis

**Wkp. Ref.**

1. Review previous OTS examination reports, internal and external audit reports, management letters, supervisory correspondence, and any approval conditions or enforcement actions. Perform any necessary follow-up procedures to ensure the association took effective correction action or is complying with conditions.

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**Wkp. Ref.**

2. Review the following documents:
- The broker-dealer's most recent NASD, SEC, or state examination reports that the savings association has available.
  - Any financial reports related to the networking arrangement.
  - The most recent public accounting report of the broker-dealer.
  - All written agreements (and conditions of approval if applicable) pertaining to the networking arrangement.
  - Thrift Financial Report information regarding mutual fund and annuity sales.
  - Board minutes related to the networking arrangement.
  - Reports pertaining to internal audit and compliance reviews.
- 

### **Level I**

3. Evaluate the savings association's procedures to implement corrective action in response to internal weaknesses or violations of applicable laws or regulations identified through compliance reviews, monitoring systems, internal audits, and examinations by OTS.
- 
4. Determine whether the board of directors adopted, and periodically review, a written statement that addresses the risks of the networking arrangement and the policies and procedures the association has in place to address those risks?
- 
5. Confirm that the savings association has compliance and internal audit controls and procedures to ensure adherence to board approved policies and procedures and determine:
- Whether the compliance program is independent of the networking arrangement.

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**Wkp. Ref.**

- Whether the savings association implemented post transaction quality controls, such as: exception-reporting systems, reviews of customer satisfaction, and internal and external audits.
- Whether the compliance program, at a minimum, includes a system to monitor to detect and prevent improper practices in the networking arrangement.

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6. Determine how the board develops and approves the policies and procedures for the networking arrangement. Review the policies and procedures to determine if they address the following:

- Compliance procedures.
- Supervision of personnel involved in sales.
- Types of products sold, selection criteria.
- Permissible use of customer information.
- Designation of employees to sell investment products.
- Disclosures and advertising.
- Setting and circumstances.
- Qualifications and training.
- Compensation.

---

7. Determine if the savings association conducted a thorough review of broker-dealer (affiliate or nonaffiliate) before entering into the networking arrangement. If so, did the review include the following information:

- Competence, experience, and integrity.
- Financial condition.

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**Wkp. Ref.**

- Checking the broker-dealer's credit rating through a nationally recognized rating system.
- Business reputation, complaints and litigation, past and present.
- Staff's competence, qualifications and training.
- Internal control environment.
- Information and reporting system including its ability and willingness to deliver reports to the savings association regarding the networking arrangement.
- Contingency and recovery plan.
- Insurance coverage.

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8. Determine if the savings association periodically checks the disciplinary history of the broker-dealer and broker-dealer's registered representatives that work on the savings association's premises.

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9. Was the review of the broker-dealer performed by savings association personnel with appropriate knowledge, experience, and analytical skills?

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10. Determine if the broker-dealer is an affiliate of the savings association. If so, do all transactions comport with regulations on transactions with affiliates?

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**Wkp. Ref.**

11. Evaluate the reports management is regularly receiving from the broker-dealer regarding the networking arrangement. Determine if the reports contain the following:

- Transactions for each registered representative.
- All transactions per individual customer.
- Transactions by investment products.
- All transactions in proprietary products.
- Transactions by customer type.

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12. Verify that a written agreement exists, and review the agreement to determine that, at a minimum, it addresses the following:

- The duties and responsibilities of each party to include the type of reports the broker-dealer is required to provide the savings association in connection with the networking arrangement.
- A description of permissible activities by the broker-dealer on the premises of the savings association.
- A description of the broker-dealer's internal controls that will ensure compliance with applicable law.
- Define the terms of the broker-dealer's use of the savings association's space, personnel and equipment.
- The types of investment products and services to be provided and related restrictions.
- Insurance requirements.
- An assurance that the broker-dealer will not disclose or use the savings association's customer's personal information for any purpose other than in connection with the networking arrangement and will comply with OTS Privacy regulations.

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- Broker-dealer's authorization of the savings association and OTS, in accordance with functional regulation guidelines, to have access to its examination reports, records, personnel, and premises as necessary or appropriate to evaluate compliance with the terms of the agreement.
- A copy of all employment contracts.
- A description of the compensation arrangements of the registered representatives involved in the networking arrangement.
- Indemnification of the savings association by the broker-dealer for the conduct of its employees (or independent contractors) in connection with the networking arrangement.

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13. Does the savings association have policies and procedures regarding dual employees that describe the circumstances in which the dual employee will be acting on behalf of the savings association and the circumstances in which the dual employee will be acting on behalf of the broker-dealer as a registered representative?

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14. Identify the person(s) at the savings association responsible for the management of the networking arrangement. Review their backgrounds, qualifications and employment history with the savings association.

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15. Review the savings association's training material for nonregistered savings association employees. Is it clear that the savings association trains these individuals in acceptable referral practices that would prohibit them from discussing the features of investment products, soliciting sales, or offering investment advice?

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**Wkp. Ref.**

16. Determine whether the savings association's board of directors has established adequate procedures for evaluating and determining investment products offered through the networking arrangement.
- 
17. Determine if the savings association's policies and procedures and training material as well as the broker-dealer's training material state that each dual employee is to comply with the requirement that they disclose to the customer that they represent the broker-dealer, rather than the savings association, when discussing investment services or products.
- 
18. Review advertisements and other promotional material to determine if the savings association clearly distinguishes information regarding nondeposit investment products from that of the savings association's FDIC insured products. Does the savings association ensure that a clear and accurate explanation of coverage follow any references to insurance coverage other than the FDIC (such as SIPC, state funds, or private companies)?
- 
19. Review advertisements and other promotional material of the networking arrangement to determine whether they contain the following minimum disclosures (or in the shorter logo format):
- Investment products are not insured by the FDIC (Not FDIC insured).
  - Investment products are not deposits or other obligations of the savings association and are not guaranteed by the savings association (No Bank Guarantee).
  - Investment products are subject to investment risks, including the possible loss of the principal invested (May Lose Value).
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**Wkp. Ref.**

20. Review advertisements and other promotional material to determine if the minimum disclosures are on the front of brochures, in the top portion of any text regarding nondeposit investment products, and at the beginning of any sales presentations, customer referrals or solicitations. Such disclosures should be highlighted in a box, with bold type or with bullet points.

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21. Review advertisements and other promotional material regarding the networking arrangement to determine if they clearly state the name of the broker-dealer.

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22. Review advertisements and other promotional material to determine if they omit material facts or mislead customers regarding the characteristics of, and risks associated with, particular investment products.

*Note:* Procedures from Section 425, Advertising, in the Compliance Handbook are also applicable to advertising.

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23. Determine if customers are receiving the required minimum disclosures. Any No answers are not consistent with interagency policy.

- Does the savings association's customer account agreement (or a separate disclosure form) contain the following information:
  - Investment products are not insured by the FDIC.
  - Investment products are not deposits or other obligations of the association or guaranteed by the savings association.
  - Investment products are subject to investment risks, including possible loss of principal invested.

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- Are the above disclosures conspicuous, in that they are:
  - On the front of materials or adjacent to the signature block.
  - Highlighted in a box, with bold print, or with larger typeface.
- Does the broker-dealer's training material and the savings association's policies and procedures indicate that the disclosures are to be given to all customers in the following form at the following times:
  - Orally, during any sales presentation.
  - Orally, when the registered representative provides investment advice concerning nondeposit investment products.
  - Orally, and in writing, prior to or at the time the customer opens an investment account.
- Does the broker-dealer's training material and the savings association's policies and procedures provide that customers are to be given prospectuses that list material relationships and disclosure regarding all fees, penalties, or surrender charges. Do the training materials and the policies and procedures indicate that these written disclosures are to be given to the customer before or at the time an account is opened to purchase investment products?
- Does the broker-dealer's training material and the savings association's policies and procedures provide that all registered representative are to advise prospective customers to review information such as offering circulars or prospectuses before purchasing an investment product?
- Does the broker-dealer's training material and the savings association's policies and procedures require customers to sign a certification form acknowledging that they have received and understand the minimum disclosures?

- 
24. Review account statements provided by the savings association that contain information regarding deposit insurance products and nondeposit investment products sold through the networking arrangement.

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- Determine if information concerning the nondeposit investment products is clearly separate from information regarding deposit account activity.
- Determine if the statement includes the required minimum disclosures.
- Determine if the statement includes the identify of the broker-dealer.

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25. Determine if the savings association offers proprietary funds as an investment product. Determine if the name(s) and logos of the proprietary funds are similar to that of the savings association. Determine whether savings association management can demonstrate that they observe applicable SEC requirements when the name of a proprietary mutual fund is similar to that of the savings association. Refer to Appendix D, SEC Policy on Bank Mutual Fund Names.

- 
26. Review savings association's policies and procedures to determine whether the savings association conducts sales of nondeposit investment products in a physical location distinct from deposit taking activities of the savings association. Use the following criteria:
- The area where the broker-dealer offers nondeposit investment products is physically separate from teller windows and other areas where the savings association conducts retail deposit-taking activities.
  - The savings association locates literature and information on nondeposit investment products in areas that are clearly separate from material on traditional savings association products.
  - Signs and literature should clearly state that nondeposit investment products are not FDIC insured.
  - The savings association locates broker-dealers' signs and advertisements in areas other than at teller windows.
  - The savings association posts rates for insured deposits and nondeposit investment products separately.

**Exam Date:** \_\_\_\_\_  
**Prepared By:** \_\_\_\_\_  
**Reviewed By:** \_\_\_\_\_  
**Docket #:** \_\_\_\_\_

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## Networking Arrangements Program

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**Wkp. Ref.**

- The savings association prohibits employees, while located in the routine deposit-taking areas such as teller windows, from making any recommendations regarding nondeposit investment products or engaging in any activities related to offering or selling such products.

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27. Does the association have an interactive web site where customers can conduct both insured and uninsured transactions? If so, does the association observe the following safeguards to prevent customer confusion:

- Appropriate disclosures.
- Firewalls, or notices, or speed bumps to ensure the customer knows they are leaving an insured deposit area and entering a nondeposit investment or securities area.

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28. Does the association have a noninteractive web site where they advertise both insured and nondeposit investment products? Does the association appropriately segregate the information and does the association prominently place the interagency disclosures with information about nondeposit investments?

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29. Review the broker-dealer's written employment agreement for each dual employee and the broker-dealer's method of compensation for each registered representative. Determine whether the method of compensation is in accordance with applicable law, OTS policy and the savings association's policies and procedures by considering the following:

- Whether broker-dealer's compensation plan for registered representatives strongly favors proprietary or other specific products.
  - Whether compliance or audit personnel are excluded from incentive compensation programs directly related to the results of the networking arrangement.
- 

**Exam Date:** \_\_\_\_\_  
**Prepared By:** \_\_\_\_\_  
**Reviewed By:** \_\_\_\_\_  
**Docket #:** \_\_\_\_\_

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## Networking Arrangements Program

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**Wkp. Ref.**

30. Determine if the referral fee arrangement complies with SEC requirements.

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31. Determine whether the networking arrangement's operating results are consistent with business plan projections and that management periodically addresses long-range strategic planning.

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32. Review Level II procedures and perform those necessary to test, support, and present conclusions derived from performance of Level I procedures.

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### **Level II**

33. Determine if the savings association has blanket bond insurance that extends to the networking arrangement.

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34. Verify that the broker-dealer has insurance as required under the networking agreement.

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35. Determine if the savings association reviews customer complaints regarding the networking arrangement. If so, determine who reviews these complaints and what actions they take as a result.

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36. Evaluate the networking arrangement's operating results and the volume of business against business plan estimates for overall operations and specific types of investment products. Savings association management should be able to explain material variances.

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**Exam Date:** \_\_\_\_\_

**Prepared By:** \_\_\_\_\_

**Reviewed By:** \_\_\_\_\_

**Docket #:** \_\_\_\_\_

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## Networking Arrangements Program

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**Wkp. Ref.**

37. If applicable, confirm that the networking arrangement is operating in accordance with the conditions contained in the OTS application approval.

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38. Determine whether on-premise sales of a savings association's securities, or those of an affiliate, comply with the restrictions in 12 CFR § 563.76 and are consistent with the safeguards listed in TB 23a, Sales of Securities.

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39. If proprietary mutual funds are being sold through the networking arrangement, review the savings association's policies and procedures and the broker-dealer's training material to determine whether registered representatives are to provide prospectuses or other written disclosures about the fund before the purchase.

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40. Review registered representatives' compensation arrangements. Determine whether there are any incentives to sell proprietary investment products. Review broker-dealer training material on suitability to ensure that compensation is not a factor in determining suitability.

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41. Review the association's earnings and evaluate the profitability of networking activities.

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42. Ensure that the review meets the Objectives of this Handbook Section. State your findings and conclusions, as well as appropriate recommendations for any necessary corrective measures, on the appropriate work papers and report pages.

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**Exam Date:** \_\_\_\_\_

**Prepared By:** \_\_\_\_\_

**Reviewed By:** \_\_\_\_\_

**Docket #:** \_\_\_\_\_



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## Networking Arrangements Program

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**Wkp. Ref.**

### Level III

43. Sample customer files and determine if the broker-dealer made all applicable disclosures and obtained the customer's signature on the disclosure form.
- 
44. Visit all branch locations where the broker-dealer sells nondeposit investment products on the savings association's premises.
- Ensure that the required physical distinction is obvious to customers.
  - Review the promotional material on-site.
  - Interview employees to determine adequate training.
- 
45. Determine if the broker-dealer and savings association have a contingency plan for handling adverse events, such as a sudden market downturn that may result in a large volume of customer calls.
- 
46. In accordance with functional regulation guidelines, verify the accuracy of the broker-dealer's reports to management of the savings association and management's reports to the board regarding the networking arrangement.
- 
47. Determine if the savings association conducts customer satisfaction surveys or mystery shopping trips regarding the networking arrangement. If so, determine who reviews these surveys and what actions they take as a result.
- 

**Exam Date:** \_\_\_\_\_

**Prepared By:** \_\_\_\_\_

**Reviewed By:** \_\_\_\_\_

**Docket #:** \_\_\_\_\_

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## Networking Arrangements Program

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**Wkp. Ref.**

48. For proprietary funds, review current ratings from rating agencies such as Standard and Poors (S&P is a rating agency of many mutual funds). Try to determine if there are any circumstances or recent events that would be a reason for the rating agency to change (especially downgrade) the current rating.

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### Examiner's Summary, Recommendations, and Comments

**Exam Date:** \_\_\_\_\_  
**Prepared By:** \_\_\_\_\_  
**Reviewed By:** \_\_\_\_\_  
**Docket #:** \_\_\_\_\_

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**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
FEDERAL DEPOSIT INSURANCE CORPORATION  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
OFFICE OF THRIFT SUPERVISION**

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**INTERAGENCY STATEMENT  
ON RETAIL SALES OF NONDEPOSIT INVESTMENT PRODUCTS**

February 15, 1994

**INTRODUCTION**

Recently many insured depository institutions have expanded their activities in recommending or selling to retail customers nondeposit investment products, such as mutual funds and annuities. Many depository institutions are providing these services at the retail level, directly or through various types of arrangements with third parties.

Sales activities for nondeposit investment products should ensure that customers for these products are clearly and fully informed of the nature and risks associated with these products. In particular, where nondeposit investment products are recommended or sold to retail customers, depository institutions should ensure that customers are fully informed that the products:

- are not insured by the FDIC;
- are not deposits or other obligations of the institution and are not guaranteed by the institution; and,
- are subject to investment risks, including possible loss of the principal invested.

Moreover, sales activities involving these investment products should be designed to minimize the possibility of customer confusion and to safeguard the institution from liability under the applicable anti-fraud provisions of the federal securities laws, which, among other things, prohibit materially misleading or inaccurate representations in connection with the sale of securities.

The four federal banking agencies -- 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 -- are issuing this Statement to provide uniform guidance to depository institutions engaging in these activities.<sup>1</sup>

## SCOPE

This Statement applies when retail recommendations or sales of nondeposit investment products are made by:

- employees of the depository institution;
- employees of a third party, which may or may not be affiliated with the institution,<sup>2</sup> occurring on the premises of the institution (including telephone sales or recommendations by employees or from the institution's premises and sales or recommendations initiated by mail from its premises); and
- sales resulting from a referral of retail customers by the institution to a third party when the depository institution receives a benefit for the referral.

These guidelines generally do not apply to the sale of nondeposit investment products to nonretail customers, such as sales to fiduciary accounts administered by an institution.<sup>3</sup> However, as part of its fiduciary responsibility, an institution should take appropriate steps to avoid potential customer confusion when providing nondeposit investment products to the institution's fiduciary customers.

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<sup>1</sup> Each of the four banking agencies has in the past issued guidelines addressing various aspects of the retail sale of nondeposit investment products. OCC Banking Circular 274 (July 19, 1993); FDIC Supervisory Statement FIL-71-93 (October 8, 1993); Federal Reserve Letters SR 93-35 (June 17, 1993), and SR 91-14 (June 6, 1991); OTS Thrift Bulletin 23-1 (Sept. 7, 1993). This Statement is intended to consolidate and make uniform the guidance contained in the various existing statements of each of the agencies, all of which are superseded by this Statement.

Some of the banking agencies have adopted additional guidelines covering the sale of certain specific types of instruments by depository institutions, i.e., obligations of the institution itself or of an affiliate of the institution. These guidelines remain in effect except where clearly inapplicable.

<sup>2</sup> This Statement does not apply to the subsidiaries of insured state nonmember banks, which are subject to separate provisions, contained in 12 CFR 337.4, relating to securities activities. For OTS-regulated institutions that conduct sales of nondeposit investment products through a subsidiary, these guidelines apply to the subsidiary. 12 CFR 545.74 also applies to such sales. Branches and agencies of U.S. foreign banks should follow these guidelines with respect to their nondeposit investment sales programs.

<sup>3</sup> Restrictions on a national bank's use as fiduciary of the bank's brokerage service or other entity with which the bank has a conflict of interest, including purchases of the bank's proprietary and other products, are set out in 12 CFR 9.12. Similar restrictions on transactions between funds held by a federal savings association as fiduciary and any person or organization with whom there exists an interest that might affect the best judgment of the association acting in its fiduciary capacity are set out in 12 CFR 550.10.

**ADOPTION OF POLICIES AND PROCEDURES**

**Program Management.** A depository institution involved in the activities described above for the sale of nondeposit investment products to its retail customers should adopt a written statement that addresses the risks associated with the sales program and contains a summary of policies and procedures outlining the features of the institution's program and addressing, at a minimum, the concerns described in this Statement. The written statement should address the scope of activities of any third party involved, as well as the procedures for monitoring compliance by third parties in accordance with the guidelines below. The scope and level of detail of the statement should appropriately reflect the level of the institution's involvement in the sale or recommendation of nondeposit investment products. The institution's statement should be adopted and reviewed periodically by its board of directors. Depository institutions are encouraged to consult with legal counsel with regard to the implementation of a nondeposit investment product sales program.

The institution's policies and procedures should include the following:

- **Compliance procedures.** The procedures for ensuring compliance with applicable laws and regulations and consistency with the provisions of this Statement.
- **Supervision of personnel involved in sales.** A designation by senior managers of specific individuals to exercise supervisory responsibility for each activity outlined in the institution's policies and procedures.
- **Types of products sold.** The criteria governing the selection and review of each type of product sold or recommended.
- **Permissible use of customer information.** The procedures for the use of information regarding the institution's customers for any purpose in connection with the retail sale of nondeposit investment products.
- **Designation of employees to sell investment products.** A description of the responsibilities of those personnel authorized to sell nondeposit investment products and of other personnel who may have contact with retail customers concerning the sales program; and a description of any appropriate and inappropriate referral activities and the training requirements and compensation arrangements for each class of personnel.

**Arrangements with Third Parties.** If a depository institution directly or indirectly, including through a subsidiary or service corporation, engages in activities as described above under which a third party sells or recommends nondeposit investment products, the institution should, prior to entering into the arrangement, conduct an appropriate review of the third party. The institution should have a written agreement with the third party that is approved by the institution's board of directors. Compliance with the agreement should be periodically monitored by the institution's senior management. At a minimum, the written agreement should:

- describe the duties and responsibilities of each party, including a description of permissible activities by the third party on the institution's premises, terms as to the use of the institution's space, personnel, and equipment, and compensation arrangements for personnel of the institution and the third party.
- specify that the third party will comply with all applicable laws and regulations, and will act consistently with the provisions of this Statement and, in particular, with the provisions relating to customer disclosures.
- authorize the institution to monitor the third party and periodically review and verify that the third party and its sales representatives are complying with its agreement with the institution.
- authorize the institution and the appropriate banking agency to have access to such records of the third party as are necessary or appropriate to evaluate such compliance.
- require the third party to indemnify the institution for potential liability resulting from actions of the third party with regard to the investment product sales program.
- provide for written employment contracts, satisfactory to the institution, for personnel who are employees of both the institution and the third party.

## GENERAL GUIDELINES

### 1. Disclosures and Advertising

The banking agencies believe that recommending or selling nondeposit investment products to retail customers should occur in a manner that assures that the products are clearly differentiated from insured deposits. Conspicuous and easy to comprehend disclosures concerning the nature of nondeposit investment products and the risk inherent in investing in these products are one of the most important ways of ensuring that the differences between nondeposit products and insured deposits are understood.

**Content and Form of Disclosure.** Disclosures with respect to the sale or recommendation of these products should, at a minimum, specify that the product is:

- not insured by the FDIC;
- not a deposit or other obligation of, or guaranteed by, the depository institution;
- subject to investment risks, including possible loss of the principal amount invested.

The written disclosures described above should be conspicuous and presented in a clear and concise manner. Depository institutions may provide any additional disclosures that further clarify the risks involved with particular nondeposit investment products.

**Timing of Disclosure.** The minimum disclosures should be provided to the customer:

- orally during any sales presentation;
- orally when investment advice concerning nondeposit investment products is provided;
- orally and in writing prior to or at the time an investment account is opened to purchase these products; and
- in advertisements and other promotional materials, as described below.

A statement, signed by the customer, should be obtained at the time such an account is opened, acknowledging that the customer has received and understands the disclosures. For investment accounts established prior to the issuance of these guidelines, the institution should consider obtaining such a signed statement at the time of the next transaction.

Confirmations and account statements for such products should contain at least the minimum disclosures if the confirmations or account statements contain the name or the logo of the depository institution or an affiliate.<sup>4</sup> If a customer's periodic deposit account statement includes account information concerning the customer's nondeposit investment products, the information concerning these products should be clearly separate from the information concerning the deposit account, and should be introduced with the minimum disclosures and the identity of the entity conducting the nondeposit transaction.

**Advertisements and Other Promotional Material.** Advertisements and other promotional and sales material, written or otherwise, about nondeposit investment products sold to retail customers should conspicuously include at least the minimum disclosures discussed above and must not suggest or convey any inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance. The minimum disclosures should also be emphasized in telemarketing contacts. Any third party advertising or promotional material should clearly identify the company selling the nondeposit investment product and should not suggest that the depository institution is the seller. If brochures, signs, or other written material contain information about both FDIC-insured deposits and nondeposit investment products, these materials should clearly segregate information about nondeposit investment products from the information about deposits.

**Additional Disclosures.** Where applicable, the depository institution should disclose the existence of an advisory or other material relationship between the institution or an affiliate of the institution and an investment company whose shares are sold by the institution and any material relationship between the institution and an affiliate involved in providing nondeposit investment products. In addition, where applicable, the existence of any fees, penalties, or surrender charges should be disclosed. These additional disclosures should be made prior to or at the time an investment account is opened to purchase these products.

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<sup>4</sup> These disclosures should be made in addition to any other confirmation disclosures that are required by law or regulation. E.g., 12 CFR Parts 12 and 344, and 12 CFR 208.8(k)(3).

If sales activities include any written or oral representations concerning insurance coverage provided by any entity other than the FDIC, e.g., the Securities Investor Protection Corporation (SIPC), a state insurance fund, or a private insurance company, then clear and accurate written or oral explanations of the coverage must also be provided to customers when the representations concerning insurance coverage are made, in order to minimize possible confusion with FDIC insurance. Such representations should not suggest or imply that any alternative insurance coverage is the same as or similar to FDIC insurance.

Because of the possibility of customer confusion, a nondeposit investment product must not have a name that is identical to the name of the depository institution. Recommending or selling a nondeposit investment product with a name similar to that of the depository institution should only occur pursuant to a sales program designed to minimize the risk of customer confusion. The institution should take appropriate steps to assure that the issuer of the product has complied with any applicable requirements established by the Securities and Exchange Commission regarding the use of similar names.

## **2. Setting and Circumstances**

Selling or recommending nondeposit investment products on the premises of a depository institution may give the impression that the products are FDIC-insured or are obligations of the depository institution. To minimize customer confusion with deposit products, sales or recommendations of nondeposit investment products on the premises of a depository institution should be conducted in a physical location distinct from the area where retail deposits are taken. Signs or other means should be used to distinguish the investment sales area from the retail deposit-taking area of the institution. However, in the limited situation where physical considerations prevent sales of nondeposit products from being conducted in a distinct area, the institution has a heightened responsibility to ensure appropriate measures are in place to minimize customer confusion.

In no case, however, should tellers and other employees, while located in the routine deposit-taking area, such as the teller window, make general or specific investment recommendations regarding nondeposit investment products, qualify a customer as eligible to purchase such products, or accept orders for such products, even if unsolicited. Tellers and other employees who are not authorized to sell nondeposit investment products may refer customers to individuals who are specifically designated and trained to assist customers interested in the purchase of such products.

## **3. Qualifications and Training**

The depository institution should ensure that its personnel who are authorized to sell nondeposit investment products or to provide investment advice with respect to such products are adequately trained with regard to the specific products being sold or recommended. Training should not be limited to sales methods, but should impart a thorough knowledge of the products involved, of applicable legal restrictions, and of customer protection requirements. If depository institution personnel sell or recommend securities, the training should be the substantive equivalent of that



required for personnel qualified to sell securities as registered representatives.<sup>5</sup> Depository institution personnel with supervisory responsibilities should receive training appropriate to that position. Training should also be provided to employees of the depository institution who have direct contact with customers to ensure a basic understanding of the institution's sales activities and the policy of limiting the involvement of employees who are not authorized to sell investment products to customer referrals. Training should be updated periodically and should occur on an ongoing basis.

Depository institutions should investigate the backgrounds of employees hired for their nondeposit investment products sales programs, including checking for possible disciplinary actions by securities and other regulators if the employees have previous investment industry experience.

#### **4. Suitability and Sales Practices**

Depository institution personnel involved in selling nondeposit investment products must adhere to fair and reasonable sales practices and be subject to effective management and compliance reviews with regard to such practices. In this regard, if depository institution personnel recommend nondeposit investment products to customers, they should have reasonable grounds for believing that the specific product recommended is suitable for the particular customer on the basis of information disclosed by the customer. Personnel should make reasonable efforts to obtain information directly from the customer regarding, at a minimum, the customer's financial and tax status, investment objectives, and other information that may be useful or reasonable in making investment recommendations to that customer. This information should be documented and updated periodically.

#### **5. Compensation**

Depository institution employees, including tellers, may receive a one-time nominal fee of a fixed dollar amount for each customer referral for nondeposit investment products. The payment of this referral fee should not depend on whether the referral results in a transaction.

Personnel who are authorized to sell nondeposit investment products may receive incentive compensation, such as commissions, for transactions entered into by customers. However, incentive compensation programs must not be structured in such a way as to result in unsuitable recommendations or sales being made to customers.

Depository institution compliance and audit personnel should not receive incentive compensation directly related to results of the nondeposit investment sales program.

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<sup>5</sup> Savings associations are not exempt from the definitions of "broker" and "dealer" in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; therefore, all securities sales personnel in savings associations must be registered representatives.

## 6. Compliance

Depository institutions should develop and implement policies and procedures to ensure that nondeposit investment product sales activities are conducted in compliance with applicable laws and regulations, the institution's internal policies and procedures, and in a manner consistent with this Statement. Compliance procedures should identify any potential conflicts of interest and how such conflicts should be addressed. The compliance procedures should also provide for a system to monitor customer complaints and their resolution. Where applicable, compliance procedures also should call for verification that third party sales are being conducted in a manner consistent with the governing agreement with the depository institution.

The compliance function should be conducted independently of nondeposit investment product sales and management activities. Compliance personnel should determine the scope and frequency of their own review, and findings of compliance reviews should be periodically reported directly to the institution's board of directors, or to a designated committee of the board. Appropriate procedures for the nondeposit investment product program should also be incorporated into the institution's audit program.

### **SUPERVISION BY BANKING AGENCIES**

The federal banking agencies will continue to review a depository institution's policies and procedures governing recommendations and sales of nondeposit investment products, as well as management's implementation and compliance with such policies and all other applicable requirements. The banking agencies will monitor compliance with the institution's policies and procedures by third parties that participate in the sale of these products. The failure of a depository institution to establish and observe appropriate policies and procedures consistent with this Statement in connection with sales activities involving nondeposit investment products will be subject to criticism and appropriate corrective action.

Questions on the Statement may be submitted to:

FRB – Division of Banking Supervision and Regulation, Securities Regulation Section,  
(202) 452-2781; Legal Division, (202) 452-2246.

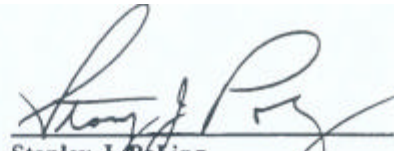
FDIC – Office of Policy, Division of Supervision, (202) 898-6759;  
Regulation and Legislation Section, Legal Division (202) 898-3796.

OCC – Office of the Chief National Bank Examiner, Capital Markets Group,  
(202) 874-5070.

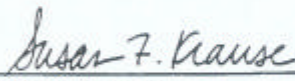
OTS – Office of Supervision Policy, (202) 906-5740, Corporate and  
Securities Division, (202) 906-7289.



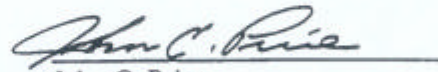
Richard Spillenkothen  
Director, Division of Banking  
Supervision & Regulation  
Federal Reserve Board



Stanley J. Poling  
Director, Division of Supervision  
Federal Deposit Insurance Corporation



Susan F. Krause  
Senior Deputy Comptroller for  
Bank Supervision Policy  
Office of the Comptroller of the  
Currency



John C. Price  
Acting Assistant Director for Policy  
Office of Thrift Supervision

EFFECTIVE DATE: February 15, 1994

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**OFFICE OF THE COMPTROLLER OF THE CURRENCY  
OFFICE OF THRIFT SUPERVISION  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
FEDERAL DEPOSIT INSURANCE CORPORATION**

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September 12, 1995

**JOINT INTERPRETATIONS OF THE INTERAGENCY STATEMENT  
ON RETAIL SALES OF NONDEPOSIT INVESTMENT PRODUCTS**

The Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Reserve Board (FRB) and the Federal Deposit Corporation (FDIC) (banking agencies) have collectively responded to an American Bankers Association (ABA) letter regarding the application of the Interagency Statement on Retail Sales of Nondeposit Investment Products (the Interagency Statement) issued February 15, 1994. A copy of the banking agencies' response is attached.

The banking agencies are also taking this opportunity to communicate our position regarding abbreviated disclosures and to clarify certain instances where we believe that it is not necessary to provide the disclosures outlined in the Interagency Statement. The use of abbreviated disclosure under the circumstances described offers an optional alternative to the longer disclosures prescribed by the Interagency Statement.

**RESPONSE TO THE ABA**

As more fully explained in the attached letter, the banking agencies' response to the ABA addresses the following:

- Retail sales include (but are not limited to) sales to individuals by depository institution personnel or third party personnel conducted in or adjacent to a depository institution's lobby area.
- Sales of government and municipal securities made in a depository institution's dealer department located away from the lobby area are not subject to the Interagency Statement.
- The Interagency Statement generally does not apply to fiduciary accounts administered by a depository institution. However, for fiduciary accounts where the customer directs investments, such as self-directed individual retirement accounts, the disclosures prescribed by the Interagency Statement should be provided.

- The Interagency Statement applies to affiliated broker dealers when the sales occur on the premises of the depository institution. The Statement also applies to sales activities of an affiliated broker dealer resulting from a referral of retail customers by the depository institution.

### DISCLOSURE MATTERS

The banking agencies would like to address several disclosure matters with respect to the Interagency Statement. In particular, the agencies agree there are limited situations in which the disclosure guidelines need not apply or where a shorter logo format may be used in lieu of the longer written disclosures called for by the Interagency Statement.

The Interagency Statement disclosures do not need to be provided in the following situations:

- radio broadcasts of 30 seconds or less;
- electronic signs<sup>1</sup>; and
- signs, such as banners and posters, when used only as location indicators.

Additionally, third party vendors not affiliated with the depository institution need not make the Interagency Statement disclosures on nondeposit investment product confirmations and in account statements that may incidentally, with a valid business purpose, contain the name of the depository institution.

The banking agencies have been asked whether shorter, logo format disclosures may be used in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials, such as brochures. The text of an acceptable logo format disclosure would include the following statements:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

The logo format disclosures would be boxed, set in bold face type, and displayed in a conspicuous manner. The full disclosures prescribed by the Interagency Statement should continue to be provided in written acknowledgement forms that are signed by customers. An example of an acceptable logo disclosure is:

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<sup>1</sup> “Electronic signs” may include billboards signs that are electronic, time and temperature signs, and ticker tape signs. Electronic signs would not include such media as television, on line services, or ATM’S.

<b>NOT FDIC- INSURED</b>	<b>May lose value  No bank guarantee</b>
----------------------------------	--------------------------------------------------

Questions on the Interagency Statement may be submitted to:

- OCC – Office of the Chief National Bank Examiner, Capital Markets Group,  
(202) 874-5070.
- OTS – Office of Supervision Policy (202) 906-5740; Business Transactions Division,  
(202) 906-7289.
- FRB – Division of Banking Supervision and Regulation, Securities Regulation Section,  
(202) 452-2781; Legal Division, (202) 452-2246.
- FDIC – Office of Policy, Division of Supervision, (202) 898-6759; Regulation and  
Legislation Section, Legal Division (202) 898-3196.

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**Board of Governors of the Federal Reserve  
Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency  
Office of Thrift Supervision**

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Ms. Sarah A. Miller  
Senior Government Relations Counsel  
Trust and Securities  
American Bankers Association  
1120 Connecticut Avenue, NW  
Washington, DC 20036

Dear Ms. Miller:

This is in response to your letters to the staffs of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (banking agencies) seeking clarification of the application of the February 15, 1994, Interagency Statement on Retail Sales of Nondeposit Investment Products. To promote uniformity in the supervision of these activities, the agencies along with the Office of Thrift Supervision (banking agencies) are providing this joint response.

The Interagency Statement was issued to address the expansion by depository institutions of activities involving the recommendation and sale to retail customers of nondeposit investment products, including mutual funds and annuities as well as stocks and other investment products. The Statement focuses on issues that pertain specifically to the retail sale of investment products to customers on depository institution premises, and seeks to avoid customer confusion of such products with those that are FDIC through disclosure and separation of sales of investment products from other banking activities. In addition, the Statement provides guidance to depository institutions with respect to sales practices that are consistent with those applicable to registered securities brokers and dealers.

You suggest that the application of the Statement be limited to “bank retail sales of mutual funds and annuities.” If this approach is not accepted by the banking agencies, you suggest that the Statement should not apply to sales of nondeposit investment products by a depository institution’s government and municipal securities dealer’ departments, to a trust department or to an affiliated trust company, to custodial accounts, or to a bank-affiliated stand alone brokerage operation.

### **Limitation to Sales of Mutual Funds and Annuities**

Although some depository institutions limit their sales of nondeposit investment products to mutual funds and annuities, others advertise and offer a fuller range of securities brokerage or financial advisory services to retail customers. The banking agencies are concerned that conducting

these activities on bank premises also could engender customer confusion and raise concerns about safe and sound banking practices. Thus, it would not be appropriate to limit the application of the Statement to mutual funds and annuities as you requested.

**Sales From Lobby Area Presumed Retail**

The banking agencies agree with your assessment that retail sales include (but are not limited to) sales to individuals by depository institution personnel or third party personnel conducted in or adjacent to, a depository institution's lobby area. Sales activities occurring in another location of a depository institution may also be retail sales activities covered by the Interagency Statement depending on the facts and circumstances.

**Government or Municipal Securities Dealers or Desks**

Sales of government and municipal securities made from a depository institution's dealer department away from the lobby area would not be subject to the Interagency Statement. Such departments already are regulated by the banking agencies and are subject to the statutory requirements for registration of government and municipal securities brokers and dealers. Further, such brokers and dealers are subject to sales practice and other regulations of the Department of the Treasury or the Securities and Exchange Commission, and of designated securities self regulatory organizations.

**Fiduciary Accounts, Affiliated Trust Companies and Custodian Accounts**

In general, the banking agencies agree with your view that the Interagency Statement does not apply to fiduciary accounts administered by a depository institution. However, the disclosures prescribed by the Interagency Statement should be provided to noninstitutional customers who direct investments for their fiduciary accounts, such as self directed individual retirement accounts. Nevertheless, disclosures need not be made to customers acting as professional money managers. Fiduciary accounts administered by an affiliated trust company on the depository institution's premises would be treated the same way as the fiduciary accounts of the institution.

With respect to custodian accounts maintained by a depository institution, the Interagency Statement does not apply to the activities described in your letter, e.g., collecting interest and dividend payments for securities held in the accounts and handling the delivery or collection of securities or funds in connection with a transaction.

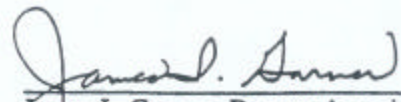
**Affiliated Stand Alone Broker Dealers**

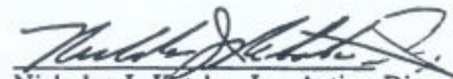
Finally, you ask how the Interagency Statement applies to bank affiliated stand alone broker dealers. The Statement applies specifically to sales of nondeposit investment products on the premises of a depository institution, e.g., whenever sales occur in the lobby area. The Statement also applies to sales activities of an affiliated broker dealer resulting from a referral of retail customers by the depository institution to the broker dealer.

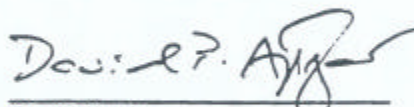


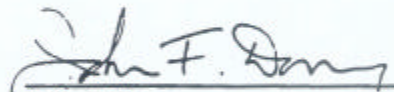
We appreciate the views of the ABA in helping to clarify the scope of the Interagency Statement. We hope that this letter will provide additional guidance to the industry in complying with the Statement in a safe and sound manner consistent with principles of customer protection.

Sincerely,

  
James I. Garner, Deputy Associate Director  
Division of Banking Supervision & Regulation  
For: Board of Governors for the  
Federal Reserve System

  
Nicholas J. Ketcha, Jr., Acting Director  
Division of Supervision  
For: Federal Deposit Insurance  
Corporation

  
David P. Apgar  
Senior Policy Advisor  
For: The Office of the Comptroller  
of the Currency

  
John F. Downey  
Director of Supervision  
For: Office of Thrift Supervision

Dated: September 12, 1995

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**SEC Policy on Networking Arrangements**

**United States  
Securities and Exchange Commission  
Washington, D.C. 20549**

November 24, 1993

Ian E. Celecia, Esq.  
Chubb Securities Corporation  
One Granite Place  
P. O. Box 2005  
Concord, New Hampshire 03302

Re: Chubb Securities Corporation

Dear Mr. Celecia:

In your letter of September 1, 1993, on behalf of Chubb Securities Corporation ("CSC"), as supplemented by telephone conversations with the staff, you request assurance that the staff would not recommend enforcement action to the Commission under Section 15(a) (1) of the Securities Exchange Act of 1934 ("Exchange Act") if CSC enters into networking arrangements with certain federal and state chartered banks, savings and loan associations, savings banks, and credit unions (collectively, "Financial Institutions") and, where required by law, their service corporation subsidiaries, to provide securities brokerage services on the premises of such Financial Institutions, as described in your letter, without the Financial Institutions, the required service corporations, or their unregistered employees registering as broker-dealers under Section 15(b) of the Exchange Act.

We understand the facts to be as follows:

CSC, a wholly-owned subsidiary of Chubb Life Insurance Company of America, is a registered broker-dealer and member of the National Association of Securities Dealers, Inc. ("NASD"). CSC proposes to enter into networking arrangements with Financial Institutions to provide securities brokerage services to customers of such Financial Institutions and the general public, on the premises of the Financial Institutions. Where required by the laws or regulations governing a Financial Institution, the Financial Institution will enter into the networking arrangement with CSC through a service corporation subsidiary of the Financial Institution.

CSC will provide brokerage services on the premises of each Financial Institution in an area that is physically separate from the Financial Institution's regular business activities, in such a way as to clearly segregate and distinguish CSC from the Financial Institution. The area in which CSC provides brokerage services will clearly display CSC's name and an indication that CSC is a member of the NASD, and will be registered with the NASD as a branch office of CSC. Under the networking arrangements, CSC will provide brokerage services only on the premises of the Financial Institutions themselves, and not in areas where a service corporation has a location independent of the Financial Institution.

The networking arrangement between CSC and each Financial Institution (including its required service corporation) will be governed by a Customer Access Agreement, which will set forth the

responsibilities of the parties, the conditions of the arrangement, and the compensation to be received by the Financial Institution (including its required service corporation). As a registered broker-dealer, CSC will comply with all statutory and regulatory requirements applicable to broker-dealers, including applicable rules of self-regulatory organizations (“SROs”). CSC will exclusively control, supervise, and be responsible for all securities business conducted in its locations at the Financial Institutions. Under the networking arrangements, transactions in securities may be effected only by registered representatives of CSC, some of whom also may be employees of the Financial Institution, including its required service corporation (“Dual Employees”). CSC will control, properly supervise, and be responsible for all its registered representatives, including any Dual Employees acting in their capacity as CSC registered representatives.

Any materials used by CSC or the Financial Institutions (including required service corporations) to advertise or promote the availability of brokerage services under the networking arrangements will be approved by CSC for compliance with the federal securities laws prior to distribution. All such materials will be deemed to be CSC’s materials, and will indicate clearly that the brokerage services are being provided by CSC and not the Financial Institution or its required service corporation; that neither the Financial Institution nor its required service corporation is a registered broker or dealer; that the customer will be dealing solely with CSC with respect to the brokerage services; and that CSC is not affiliated with the Financial Institution or its required service corporation. References to a Financial Institution in advertising or promotional materials will be for the purpose of identifying the location where brokerage services are available only, and will not appear prominently in such materials.

All confirmations, account statements, and other customer communications regarding securities transactions under the networking arrangements will be sent directly to the customer by CSC or by the issuer, transfer agent, or principal underwriter of the security. All documentation sent by CSC directly to a customer, including confirmations and account statements, will indicate clearly that the brokerage services are provided by CSC and not by the Financial Institution or its required service corporation. If any documentation regarding securities transactions is sent directly to a customer of CSC by an issuer, transfer agent, or principal underwriter, CSC will be responsible for ensuring that such materials comply with the federal securities laws; and the name of the Financial Institution or its required service corporation will not appear on such materials.

Each Financial Institution (including required service corporations) will allow supervisory personnel of CSC and representatives of the Commission, the NASD and other SROs of which CSC is a member, as well as other applicable federal and state governmental authorities, to inspect the Financial Institution’s premises where CSC conducts brokerage activities and any books and records maintained by CSC with respect to brokerage activities. Each Financial Institution (including required service corporations) will be deemed to be an associated person of CSC within the meaning of Section 3(a)(18) of the Exchange Act.

Employees of the Financial Institutions (including required service corporations) who are not registered representatives of CSC will not engage in any securities or investment-related activities on behalf of CSC. Unregistered employees will be prohibited from recommending any security or giving any other form of investment advice, describing investment vehicles such as mutual funds, discussing the merits of any security or type of security with a customer, or handling any question that might require familiarity with the securities industry or the exercise of judgment regarding securities and investment alternatives. Unregistered employees will refer all securities-related questions to registered representatives of CSC. All telephone inquiries related to CSC will be answered solely by registered representatives of CSC. Unregistered employees will be prohibited from accepting or transmitting orders, handling customer funds or securities (except that unregistered employees may effect electronic funds transfers to CSC from an account at the Financial Institution or required service corporation at a customer’s request) or having any involvement in securities transactions other than providing clerical and ministerial assistance.

Unregistered employees of the Financial Institutions (including required service corporations) will not receive any compensation based on transactions in securities or the provision of securities advice. Unregistered employees may, however, be paid a nominal fee for referring Financial Institution customers to CSC. The amount of any such fees, which will be unrelated to the volume of securities traded by the customer, will be determined and paid by the Financial Institution (or required service corporation). Unregistered employees will be paid no more than one fee per customer referred. Other than this one-time, nominal fee, unregistered employees will not receive any other compensation, such as trips, free meals, or monetary awards, as the result of a referral or the number of referrals made. Supervisory employees will not receive any fees for referrals made by their subordinates.

CSC will provide conduct manuals to unregistered employees of the Financial Institutions (and required service corporations) that specify the limits on their permissible activities, as set forth above. Each Financial Institution (including required service corporations) will monitor the activities of its unregistered employees, and ensure their compliance with the limits on their permissible activities as set forth in the conduct manual. Furthermore, CSC will conduct periodic reviews to assure that the Financial Institutions (including required service corporations) and their unregistered employees comply with the limits on their activities set forth in the conduct manual. CSC also will provide each of its registered representatives with a copy of CSC's compliance manual. Registered representatives will adhere to the policies and procedures contained in CSC's compliance manual. CSC will monitor its registered representatives' compliance in this regard.

All brokerage services provided at the Financial Institutions (including required service corporations) will be provided by registered representatives of CSC, either Dual Employees or otherwise, all of whom will be registered and qualified as necessary with the Commission, the NASD, and any appropriate state regulatory authorities, and all of whom will be associated persons of CSC within the meaning of Section 3(a)(18) of the Exchange Act. Each Financial Institution (including required service corporations) will agree that any Dual Employee whom the Commission, the NASD, or CSC bars or suspends from association with CSC or any other broker-dealer will be terminated or suspended, accordingly, from all securities activities by the Financial Institution (and its required service corporation). The securities activities of each Dual Employee will be supervised by the supervisory personnel of CSC, who are registered securities principals. The amount of any transaction-related compensation paid to CSC's registered representatives, including Dual Employees, under the networking arrangement, will be determined solely by CSC. For convenience with respect to tax and social security withholding, health, retirement, and other benefits, transaction-related compensation may be paid to Dual Employees by the employer Financial Institution (including required service corporations), provided that it is clear that such payments are made on behalf of CSC from funds allocated by CSC for payment of Dual Employees.

Registered representatives are required to inform all securities customers, and obtain a written acknowledgment from such customers, that the brokerage services are being provided by CSC and not by the Financial Institution (or its required service corporation), and that the offered securities are not guaranteed by the Financial Institution (or its required service corporation) or insured by the Federal Deposit Insurance Corporation ("FDIC") or any other federal or state deposit guarantee fund relating to financial institutions.

CSC will not solicit customers of a Financial Institution in connection with the purchase or sale of the securities of that institution or any of its affiliates (including required service corporations). CSC may execute unsolicited transactions in the equity securities of the Financial Institution or its affiliates (including required service corporations) on behalf of a Financial Institution customer, provided that the customer signs an affidavit affirming that the transaction was effected on an unsolicited basis and that the customer has been informed that the securities are not insured by the Financial Institution or any of its affiliates (including required service corporations), the FDIC, or any other state or federal deposit guarantee fund relating to financial institutions. No debt securities of the Financial Institution or its affiliates (including its required

service corporations) will be sold, on an unsolicited basis or otherwise, on any part of the premises of the Financial Institution that is generally accessible to the public.

CSC will pay a fee to the Financial Institution (including required service corporations) based on all securities transactions that occur at or are attributable to activities conducted on that Financial Institution's premises. CSC will provide a copy of this letter to each Financial Institution (including required service corporations) and will ensure that each Financial Institution (including required service corporations) understands its obligations under the networking arrangement.

Response:

On the basis of your representations and the facts presented, and strict adherence thereto by CSC, the Financial Institutions (including required service corporations) and their unregistered employees, and particularly in view of the fact that CSC is a registered broker-dealer and all personnel engaged in securities activities under the networking arrangements will be fully subject to the regulatory requirements of the federal securities laws and the applicable rules of SROs, the staff would not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act if CSC offers brokerage services under the networking arrangements described above without the Financial Institutions (including required service corporations) and their unregistered employees registering as broker-dealers under Section 15(b) of the Exchange Act. This staff position is based in part on CSC's representation that it will control, properly supervise, and be responsible for all registered representatives participating in the networking arrangements. Consequently, any designation of such registered representatives as "independent contractors" will have no effect on CSC's responsibilities under the federal securities laws, including without limitation Sections 15(b) and 20(a) of the Exchange Act.<sup>1</sup>

This position concerns enforcement action only and does not represent a legal conclusion regarding the applicability of the statutory or regulatory provisions of the federal securities laws. Moreover, this position is based solely on the representations that you have made; any different facts or conditions may require a different response.

Sincerely,

/s/Catherine McGuire  
Chief Counsel

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<sup>1</sup> See *Hollinger v. Titan Capital Corp.*, 914 F.2d 1564, 1572-78 (9th Cir. 1990), cert. denied, 111 S. Ct. 1621 (1991).

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**SEC Policy on Bank and Mutual Fund Names**

**United States  
Securities and Exchange Commission  
Washington, D.C. 20549**

May 7, 1993

The Honorable John D. Dingell  
Chairman  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Dingell:

In response to your request of March 9, 1993, I asked the Division of Investment Management to prepare the enclosed memorandum on Commission and staff actions regarding mutual funds that have the same names as, or names similar to, banks that advise the funds or sell the funds' shares. As you can see, the Commission's staff is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, and are not insured or otherwise protected by the federal government.

I hope this memorandum satisfactorily responds to your questions. If you have any further questions regarding the issues raised in your letter, please contact me, Barbara J. Green, Deputy Director, or Thomas S. Harman, Associate Director, Division of Investment Management.

Sincerely,

/s/Richard C. Breeden  
Chairman

Enclosure

## MEMORANDUM

May 6, 1993

To: Chairman Breeden  
From: Barbara Green, Deputy Director  
Thomas S. Harman, Associate Director  
Division of Investment Management

Subject: Bank Mutual Fund Names

This memorandum responds to Chairman Dingell's letter of March 9, 1993 in which he asks several questions about what, if any, action the Commission has taken or intends to take to ensure that investors in bank advised or bank sold mutual funds are not misled into believing that their investments are guaranteed or insured in the same manner as bank deposits. In particular, Chairman Dingell expresses concern regarding mutual funds that have names that are the same as, or similar to, banks that advise the funds or sell the funds' shares ("common name funds"). Chairman Dingell's questions and our responses are set forth below.

**Question 1. What prohibitions or restrictions do current Commission rules and regulations contain with respect to common or shared bank and mutual fund names, and under what authorities? Please explain the rationale for said provisions or the lack thereof.**

Section 35(d) of the Investment Company Act of 1940 ("1940 Act") provides the Commission with the authority to issue an order declaring that any word or words that a mutual fund uses in its name are deceptive or misleading. The staff has taken the position under the authority of Section 35(d) that a mutual fund should not use in its name certain generic terms that may mislead investors into believing that the fund's shares are federally insured.<sup>1</sup> The staff also does not permit mutual funds that invest in U.S. government securities to use terms in their names or advertising that imply that the securities issued by the funds are guaranteed or insured by the U.S. government.<sup>2</sup>

The Commission previously has not adopted any rules or regulations prohibiting or restricting mutual funds' use of common names. However, after carefully reviewing the risk that mutual funds sold on bank premises could be misconstrued as having the benefit of either federal deposit insurance or the liquidity protections of the discount window of the Federal Reserve, the Division is of the view, under the authority of Section 35(d), that common names between federally insured institutions and funds sold or marketed by or through such institutions are presumptively misleading. A common name fund can rebut this presumption through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency.

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<sup>1</sup> See, e.g., CNA Management Corporation (pub. avail. Nov. 29, 1974) (staff letter objecting to use of "Mutual Savings Fund"); Wright Investors' Service (pub. avail. March 14, 1974) (staff letter objecting to use of "Savings"); National Securities & Research Corporation (pub. avail. Jan. 21, 1974) (staff letter objecting to use of "Savest"); Ben Franklin Thrift Shares, Incorporated (pub. avail. Sept. 1, 1973) (staff letter objecting to use of "Thrift").

<sup>2</sup> See Letter from William R. McLucas, Director, Division of Enforcement, and Gene A. Gohlke, Acting Director, Division of Investment Management, to Registrants, October 25, 1990.

As noted in response to question 4, the Commission has not taken a formal position regarding whether Section 35 should be amended to restrict or prohibit the use of common names. There is a risk that, no matter how prominent the disclosure, some customers will not appreciate that their investment in a mutual fund sold by or through a bank, especially if marketed in the lobby of the bank, could potentially fall precipitously in value in response to changes in the value of portfolio securities. The staff expects to continue to review the question of whether common names should be barred notwithstanding the level of disclosure, but the staff has not reached any such conclusion at this time.

**Question 2. What disclosures are required to prospective customers, and under what authorities? Please explain the rationale for these requirements.**

The Division will require disclosure in three situations. First, the staff will require any common name fund to disclose prominently on the cover page of its prospectus that shares in the fund are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency. The staff considers a disclosure to be prominent if it appears in some typographically distinct manner (e.g., boldface, italics, red letters, etc.). Second, the staff already requires any mutual fund whose shares are sold exclusively by or through a bank to provide essentially the same disclosure on the cover page of its prospectus.<sup>3</sup> Finally, the staff will require any bank sold mutual fund to make the same disclosure, even where that fund's shares are not sold exclusively through banks and the fund is not a common name fund.

As stated above, the Division is of the view that common names are presumptively misleading. The authority for requiring these disclosures is the Commission's broad authority to require that a prospectus contain the necessary material information to make the statements contained in the prospectus not misleading.<sup>4</sup> The policies underlying Section 35(d) provide additional authority to require disclosure with respect to common name funds. In addition, as discussed more fully below in response to question 5, broker-dealers and thrift employees, though not bank employees, are subject to certain disclosure requirements in connection with the sale of mutual fund shares to bank and thrift customers.

**Question 3. What action has the Commission taken or intends to take in response to the recent adoption by mutual funds of names similar to the banking organizations that advise them? Please explain the rationale.**

As noted above, the Division is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, that the shares are not guaranteed or endorsed by the bank, and that the shares are not insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other federal agency. The Division has reviewed a significant number of common name fund prospectuses and found that a large number already have

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<sup>3</sup> See Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, to Registrants (Feb. 22, 1993).

<sup>4</sup> See Rule 8b-20 under the 1940 Act, 17 C.F.R. 8b-20 (investment company registration statement or report required to include material information in addition to that expressly required if necessary to make the required statements not misleading); Rule 408 under the Securities Act of 1933 ("1933 Act"), 17 C.F.R. 230.408 (any registration statement required to include material information in addition to that expressly required if necessary to make the required statements not misleading); see also Section 10(c) of the 1933 Act, 15 U.S.C. 77j(c) (Commission authorized to adopt rules requiring any prospectus to provide such additional information as necessary or appropriate in the public interest or for protection of investors).



rebutted the presumption through disclosure. The Division will require that all other common name funds amend their prospectuses in the future so that they will similarly rebut the presumption through disclosure. The Division also is considering whether the rules governing mutual fund advertising should be amended to address issues raised by common name funds.<sup>5</sup>

**Question 4. What steps, if any, does the Commission believe are warranted to achieve consistent protection in this area?**

As noted above, the Division is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, that the shares are not guaranteed or endorsed by the bank, and that the shares are not insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other federal agency. Of course, the Division will apply this policy consistently to all registered funds advised by or sold through banks, thrifts or any insured depository institution.<sup>6</sup> The Commission currently does not have a position regarding whether Section 35(d) or other federal securities laws should be amended to restrict expressly or to prohibit mutual funds from using common names. The Division will continue to monitor this issue with a view towards making any needed recommendations.

**Question 5. To the knowledge of the Commission, are tellers and other personnel on bank and thrift premises complying with the applicable requirements? What resources have been committed to ensuring compliance in this area?**

Because banks are expressly excluded from the broker-dealer provisions of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>7</sup> the Commission does not have the oversight authority or the ability to allocate the resources necessary to determine if bank tellers and other bank personnel are complying with the federal securities laws. The Commission's regulatory and oversight authority with respect to personnel that sell securities on the premises of a bank is limited to the employees of registered broker-dealers, which includes bank subsidiaries and affiliates because the subsidiaries and affiliates are not covered by the bank exclusion. The Commission also has authority over the securities activities of personnel of thrift institutions (and other institutions not covered by the bank exclusion) that enter into "networking" or "kiosk" arrangements with broker-dealers.<sup>8</sup> These persons are subject to specific restrictions on their activities, as set forth in a series of no-action letters, which are described in detail in a staff memorandum forwarded to you by Chairman Breeden on February 19, 1993 ("Memorandum").<sup>9</sup> Dual employees of broker-dealers and thrift institutions that enter

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<sup>5</sup> See, e.g., Rule 134 under the 1933 Act, 17 C.F.R. 230.134 ("tombstone" advertisements); Rule 482 under the 1933 Act, 17 C.F.R. 482 ("omitting prospectus" advertising); Rule 34b-1 under the 1940 Act, 17 C.F.R. 270.34b-1 (investment company sales literature).

<sup>6</sup> The Division recently compiled the attached list of bank-related investment companies with names similar to the bank.

<sup>7</sup> Sections 3(a)(4) and 3(a)(5) of the Exchange Act exclude banks, as defined in Section 3(a)(6), from the definitions of "broker" and "dealer." See Sections 3(a)(4), 3(a)(5), and 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(4) - 78c(a)(6) (defining "broker," "dealer," and "bank").

<sup>8</sup> In a "networking" or "kiosk" arrangement, a broker-dealer agrees to provide securities services to the customers of a financial institution on the premises of that institution in exchange for a percentage of the commissions earned.

<sup>9</sup> Letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (February 19, 1993) (enclosing memorandum

into networking arrangements, for example, are required to disclose material information to investors about the risks of investing in mutual funds, including the fact that they are not federally insured or guaranteed by the institution. In addition, unregistered personnel of the institution are expressly prohibited from engaging in any sales activities. These important protections for customers are not available to the customers of banks, whose employees are exempt by current law from any similar requirements.

As noted in the Memorandum, to ensure compliance with these no-action letters, during the last fiscal year the Commission staff conducted examinations of several thrift institution networking arrangements, focusing on the broker-dealer's branch office review procedures, supervision of registered and unregistered employees, advertising, and sales practices. These examinations revealed substantial compliance with the provisions of the Exchange Act and the terms of the individual no-action letters, and isolated compliance problems were effectively addressed. The Commission, however, intends to continue to use its examination authority to monitor the sales practices and supervisory procedures of broker-dealers that sell mutual funds.

In addition, self-regulatory organizations ("SROs"), with Commission support, have taken steps to ensure that broker-dealers and their personnel that sell securities on bank or thrift premises are fully aware of and in compliance with their disclosure obligations under the federal securities laws.<sup>10</sup> Although the Commission to date has not received a significant number of investor complaints about bank mutual funds,<sup>11</sup> to supplement the efforts of the SROs, the Commission staff is currently developing educational materials discussing the risks of investing in bank mutual funds and other uninsured products, for future distribution to investors.

**Question 6. What are the risks to the insured depository institution in terms of customer backlash and litigation liability if common-name or common-logo funds suffer losses? What steps can be taken or are being taken to eliminate or manage these risks?**

We do not know whether and to what extent an insured depository institution would experience "customer backlash" or be subject to litigation if a common-name or common-logo mutual fund suffers losses. We believe that these questions, as well as the question regarding what steps have been or are being taken to address any risks, would be more appropriately directed to the banking regulators.

A bank or thrift would not be liable under the federal securities laws solely because a common-name or common-logo fund whose name is not otherwise misleading suffers losses. The bank or thrift may be liable under the federal securities laws, however, if it commits fraud in connection with the purchase or sale of securities.<sup>12</sup> In addition, a bank or thrift that sells a security by means of a prospectus or oral communication that contains an untrue statement of a material fact or omits to state a material fact may be liable to

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from the Commission's Division of Market Regulation regarding reinvestment of proceeds of certificates of deposit in securities products).

<sup>10</sup> The SROs, for example, recently announced a plan to develop a single continuing education program for all securities industry registered representatives and principals. *See 7 NASD Regulatory & Compliance Alert*, No. 1 (March, 1993). The National Association of Securities Dealers, Inc. also has implemented initiatives designed to alert broker-dealers to their disclosure obligations when recommending that investors reinvest the proceeds of certificates of deposit in securities, such as bond funds and collateralized mortgage obligations. *See, e.g., NASD Notice to Members*, No. 91-4 (November, 1991).

<sup>11</sup> The staff has reviewed its files and has not found any investor complaints alleging confusion between mutual fund investments and insured bank deposits.

<sup>12</sup> *See* Rule 10b-5 under the Exchange Act, 17 C.F.R. 240.10b-5 (general antifraud provision in connection with purchase or sale of securities).

shareholders for rescission or damages.<sup>13</sup> Further, a bank or thrift may be liable if it commits a breach of fiduciary duty in connection with its receipt of compensation from an investment company that it advises.<sup>14</sup>

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<sup>13</sup> See Section 12(2) of the 1933 Act, 15 U.S.C. 771(2) (liability for use of misleading prospectus or oral communication in connection with sale of a security).

<sup>14</sup> See Section 36(b) of the 1940 Act, 15 U.S.C. 80a-35(b) (breach of fiduciary duty by investment adviser to investment company in connection with compensation received by adviser).

January 3, 1995

**Agreement in Principle**  
**Between the**  
**Board of Governors of the Federal Reserve System**  
**Office of the Comptroller of the Currency**  
**Federal Deposit Insurance Corporation**  
**Office of Thrift Supervision**  
**and the**  
**National Association of Securities Dealers**

**Background**

In recent years, depository institutions have become increasingly involved in selling uninsured nondeposit investment products, such as mutual funds, to retail customers on their premises. In response to this development, on February 15, 1994, four federal financial institutions regulators (the banking agencies) issued an Interagency Statement on the Retail Sale of Nondeposit Investment Products (Interagency Statement). The Interagency Statement contains guidelines for sales of nondeposit investment products on depository institution premises designed to enhance protection and lessen the potential for customers confusing such products with insured deposits.

The Interagency Statement's guidelines apply to recommendations and sales of nondeposit investment products by employees of depository institutions as well employees of affiliated or unaffiliated third parties located on depository premises. When such third parties are broker dealers registered with the Securities Commission and are members of the National Association of Securities Dealers (NASD), the NASD has regulatory and examining authority with respect to requirements adopted under the federal securities laws applicable to sales of nondeposit investment products. Broker dealers that are affiliated with a depository institution also are subject to the supervisory authority of a banking agency.

The banking agencies and the NASD share a common interest in the supervision of broker dealers selling nondeposit investment products on depository institution premises and, in particular, the supervision of broker dealers affiliated with a banking organization or thrift association, i.e., an affiliate, subsidiary or service corporation of a depository institution that is supervised by one or more of the undersigned banking agencies. To ensure that this common interest is addressed with a minimum of duplication of efforts by the respective regulatory organizations and to promote regulatory consistency and reduce unnecessary burdens, the banking agencies and the NASD agree in principle to cooperate in the manner described below in order to facilitate the coordination, and enhance the effectiveness, of examination efforts by the banking agencies and by the NASD.

**Sharing of Examination Schedules and Examination Information**

1. Sharing of examination schedules between the NASD and the banking agencies for depository institutions with affiliated broker dealers.

The banking agencies shall share their respective examination schedules for investment product sales programs at depository institutions with affiliated broker dealers with the Director of the appropriate NASD district office as early in the scheduling process as practicable. To the extent practicable, the

Director of the appropriate NASD district office also should be contacted when a depository institution, that has a broker dealer affiliate located on bank premises, is given notice of an examination of its investment product sales program by a banking agency. In addition, to the extent practicable, the NASD shall provide the appropriate banking agency with an examination schedule for broker dealers affiliated with depository institutions subject to the agency's supervision and shall notify the banking agency when it initiates an examination of such a broker dealer.

If a banking agency or the NASD believes, for whatever reason, that it would be appropriate for the two to coordinate their respective examinations of a bank affiliated broker dealer, it shall contact the appropriate NASD or banking agency district office to request such coordination. A banking agency or the NASD may request that one or more of its examiners act as an observer during the other's examination of an affiliated broker dealer. Unless specifically agreed otherwise, the presence of an observer will not be viewed as a joint examination by the banking agency and the NASD, and will not result in the issuance of joint examination findings. In addition, while observers normally will not perform an examination on behalf of their agency or association, the banking agency or the NASD may pursue any observations made by its personnel as a result of such an arrangement.

2. Access to NASD examination findings and workpapers pertaining to the most recent examination of an affiliated broker dealer.

Banking agencies should have access to the results of the most recent NASD examination pertaining to an affiliated broker dealer from the depository institution or directly from the broker dealer. In instances in which such results, for whatever reason, cannot be obtained from the depository institution or its affiliated broker dealer, a banking agency may obtain information on the examination from the appropriate NASD district office. In instances in which a banking agency has questions about the NASD's findings or the status of any corrective actions taken by the broker dealer, it may contact the NASD district office that initiated the action and obtain the requested information.

If it is deemed necessary to obtain more detailed examination information concerning the affiliated broker dealer, a banking agency may contact the appropriate NASD official to arrange to review examination work papers at the NASD's district office.

3. Banking agency referrals to the NASD regarding affiliated broker dealer examination findings.

In the event that a banking agency concludes that apparent violations that fall under the regulatory jurisdiction of the NASD have occurred at a broker dealer selling nondeposit products on the premises of a depository institution, the agency shall promptly notify the NASD and cooperate to the extent permitted under applicable law.

4. NASD communications to banking agencies regarding examination results pertaining to affiliated broker dealers.

In the event that the NASD concludes that apparent violations that fall within the jurisdiction of a banking agency have occurred at a broker dealer affiliated with a depository institution, it shall promptly notify the appropriate banking agency for the depository institution affiliated with the broker dealer to the extent permitted under applicable law.

In the event the NASD has determined to initiate a formal disciplinary action against a bank affiliated broker dealer, or an individual associated with the broker dealer, alleging significant violations of NASD requirements or federal securities laws, the NASD shall promptly communicate this information to the appropriate banking agency for the depository institution affiliated with the broker dealer.

5. Communications between the banking agencies and the NASD pertaining to broker dealers not affiliated with a depository institution.

A banking agency, in connection with its examination of a depository institution, that has reasonable concerns about the activities of a broker dealer selling nondeposit investment products on the premises of an unaffiliated depository institution may request from the NASD information concerning the most recent examination results pertaining to those activities of the broker dealer if it believes that such information may facilitate the banking agency's supervision of the depository institution. The NASD will provide such information upon confirmation of the existence of an agreement between the depository institution and the broker dealer to make such information available to the institution and the appropriate banking agency and a representation that the institution/agency has been unable to obtain information notwithstanding such agreement. If it is deemed necessary to obtain more detailed examination information concerning the unaffiliated broker dealer, a banking agency may contact the appropriate NASD official to arrange for a review of the relevant examination work papers at the NASD's district office. The banking agency will use information obtained under this paragraph in connection with its oversight of the depository institution and not for the purpose of examining the unaffiliated broker dealer.

In the event the NASD has determined to initiate a formal disciplinary action alleging significant violations of NASD requirements or federal securities laws against a broker dealer, or an associated person of such broker dealer, that sells nondeposit investment products on depository institution premises but is not affiliated with the institution, the NASD shall promptly communicate this information to the appropriate banking agency for the depository institution.

6. Communications pertaining to issues of common interest.

The banking agencies and the NASD will communicate with each other to the fullest extent possible on matters of common interest, such as regulatory and policy initiatives and educational efforts, pertaining to sales of nondeposit investment products on depository institution premises in order to assure a general awareness of the respective interpretative positions taken by the banking agencies, the NASD and by other securities regulators.

7. Confidentiality of Information Exchanged Between the NASD and the Banking Agencies.

Any information exchanged between the NASD and a banking agency must be for a legitimate regulatory or supervisory purpose. The confidentiality of information relating to examination reports or other confidential supervisory information exchanged must be maintained to the fullest extent possible and may not be released to any third party or to the public without the prior written agreement of the furnishing party. Each banking agency and the NASD agree to notify the furnishing party promptly of any requests for information and to assert any applicable legal exemptions or privileges on behalf of the furnishing party as that party may request.

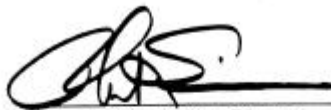
8. Existing Jurisdictions and Interagency Agreements.

Nothing in this Agreement in Principle restricts, enlarges, or otherwise modifies the respective jurisdictions of the banking agencies or the NASD. Moreover, nothing in this Agreement in Principle supersedes or modifies any existing agreement between the banking agencies concerning coordination of examination efforts or the sharing of examination information.

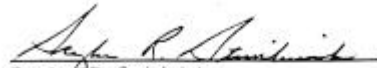
9. Designation of Officials for Purposes of Exchanging Information.

As soon as practicable after signing this Agreement in Principle, the banking agencies and the NASD will advise one another of the appropriate officials to contact for making exchanges of information covered by this Agreement in Principle, and will update such information as appropriate.

BY:



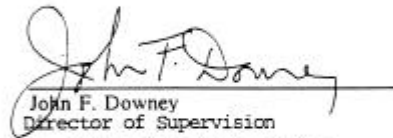
Richard Spillenkothen, Director  
Division of Banking Supervision  
for: Board of Governors for the  
Federal Reserve System



Stephen R. Steinbrink,  
Senior Deputy Comptroller  
for: Office of the Comptroller of the  
Currency



Stanley J. Poling, Director  
Division of Supervision  
for: Federal Deposit Insurance  
Corporation



John F. Downey  
Director of Supervision  
for: Office of Thrift Supervision



John E. Pinto, Executive Vice President  
for: National Association of  
Securities Dealers

This Agreement is effective January 3, 1995.

**NASD District Directors and Office Addresses****(as of April 2001)****District No. 1**

Director - Elizabeth Owens

Northern California (the counties of Monterey, San Benito, Fresno, and Inyo and the remainder of the state north and west of these counties), northern Nevada (counties of Esmeralda and Nye and the remainder of the state north or west of such counties), and Hawaii

525 Market Street, Suite 300  
San Francisco, CA 94105-2711  
415/882-1200

**District No. 2**

Director - Lani Woltmann

Southern California (that part of the state south or east of the counties of Monterey, San Benito, Fresno, and Inyo), southern Nevada (that part of the state south or east of the counties of Esmeralda and Nye), and the former U.S. Trust Territories

300 South Grand Avenue, Suite 1600  
Los Angeles, CA 90071  
213/627-2122

**District No. 3**

Director – Frank Birgfeld

Arizona, Colorado, New Mexico, Utah, and Wyoming

Republic Plaza Building  
370 17th Street, Suite 2900  
Denver, CO 80202-5629  
303/446-3100

Director - James Dawson

Alaska, Idaho, Montana, Oregon, and Washington

Two Union Square  
601 Union Street, Suite 1616  
Seattle, WA 98101-2327  
206/624-0790



### **District No. 4**

Director – Thomas Clough  
Iowa, Kansas, Minnesota, Nebraska, North Dakota, and South Dakota

12 Wyandotte Plaza  
120 W. 12th Street, Suite 900  
Kansas City, MO 64105  
816/421-5700

### **District No. 5**

Director – Warren Butler, Jr.  
Alabama, Arkansas, Kentucky, Louisiana, Mississippi, Oklahoma, and Tennessee

1100 Poydras Street  
Energy Centre, Suite 850  
New Orleans, LA 70163  
504/522-6527

### **District No. 6**

Director - Bernerd Young  
Texas  
12801 N. Central Expressway, Suite 1050  
Dallas, TX 75243  
972/701-8554

### **District No. 7**

Director - Alan Wolper  
(Florida, Georgia, North Carolina, South Carolina, Virginia, Puerto Rico, the Canal Zone, and the U.S. Virgin Islands)

One Securities Center, Suite 500  
3490 Piedmont Road, N.E.  
Atlanta, GA 30305  
404/239-6100

**District No. 8**

Director - Carlotta Romano  
Illinois, Indiana, Michigan and Wisconsin

55 West Monroe Street  
Suite 2700  
Chicago, IL 60603-5001  
312/899-4400

Director - William Jackson, Jr.  
Ohio and part of upstate New York (the counties of Monroe, Livingston, and Steuben and the remainder of the state west of such counties)

Renaissance on Playhouse Square  
1350 Euclid Avenue, Suite 650  
Cleveland, OH 44115  
216/694-4545

**District No. 9**

Director - Gary Liebowitz  
New Jersey (except southern New Jersey in the immediate Philadelphia vicinity)

581 Main Street, 7<sup>th</sup> floor  
Woodbridge, NJ 07095  
732/596-2001

Director - John Nocella  
Delaware, Pennsylvania, West Virginia, District of Columbia, Maryland, and the part of southern New Jersey in the immediate Philadelphia vicinity

11 Penn Center  
1835 Market Street, 19th Floor  
Philadelphia, PA 19103  
215/665-1180

### **District No. 10**

Director - David Leibowitz  
The five boroughs of New York City and Long Island

One Liberty Plaza  
New York, NY 10006  
212/858-4000

Long Island Satellite Office  
Two Jericho Plaza  
Jericho, NY 11753  
516/949-4201

### **District No. 11**

Director – Fred McDonald  
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, and New York (except for the counties of Monroe, Livingston, and Steuben; the five boroughs of New York City, and Long Island)

260 Franklin Street, 16th floor  
Boston, MA 02110  
617/261-0800