

TB 23-1 was rescinded 2/22/94 by TB 23-2. Click [HERE](#) to link to TB 23-2.

Handbook: Thrift Activities
Subject: Oversight by the Board of Directors

Section: 140
TB 23-1

September 7, 1993

Guidance on the Sale of Uninsured Products

RESCINDED

Summary: This bulletin reminds savings associations' boards of directors and management of the risks involved with the sale of uninsured products to customers and reiterates existing OTS rules and policies governing the sales of these products. The bulletin also contains common sense safeguards including disclosures that savings associations should employ to prevent customer confusion. This guidance applies to all sales of uninsured products that occur on association premises and any sales resulting from savings association customer referrals.

For Further Information Contact:
Your Regional office or Supervision
Policy (Thrift Policy), OTS, Wash-
ington, D.C.

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Background

Many depositors in savings associations are seeking a higher rate of return than is currently available on deposits and are turning to alternative investments. In an effort to retain these customers many savings associations have made investment services conveniently available to their customers. These investment services typically are provided by savings associations' service corporations, affiliates, or other third parties and offer uninsured products such as mutual funds, insurance annuities (fixed and variable rate), and other uninsured products.

Scope

The guidelines presented in this bulletin apply to all offers and sales of uninsured products that occur on association premises as well as any sales that result from savings association customer referrals. The OTS's examination authority covers all sales of uninsured products including those offered by service corporations, affiliates, and other third parties.

Agreements with any entity that sells uninsured products on the association's premises should outline the duties and responsibilities of all parties and should specify that the entities will comply with all applicable requirements, including those in this bulletin. These agreements should include provisions for savings association oversight and access to appropriate records. The savings association should ensure that all parties are aware that savings association management and the OTS will verify such compliance.

Safeguards to Prevent Customer Confusion

Sales of uninsured products in the offices of savings associations present a special risk that customers may confuse uninsured products with federally insured deposits. To safeguard customers and saving associations, OTS has issued several regulations and policies aimed at minimizing customer confusion. For example, regulations governing securities sales through service corporations, 12 C.F.R. 545.74(c)(4), and sales of securities of an association and its affiliates, 12 C.F.R. 563.76, require that all sales of uninsured products take place in areas segregated from areas where depository functions are performed. Where uninsured products are offered through a separate corporate entity, corporate separateness between the

association and the entity should be preserved to limit the savings association's liability.

In addition to following OTS rules in 12 C.F.R. Sections 545.74 and 563.76 and complying with applicable conditions of approval regarding such activity, savings associations should review their arrangements concerning investment services with a particular emphasis on:

- sales techniques and disclosures employed;
- compensation to savings association personnel;
- sales training;
- suitability of the products recommended given the particular circumstances of the customer involved;
- conflicts of interest or the appearance of a conflict of interest; and
- transactions in fiduciary accounts.

Sales Techniques & Disclosures

Sales representatives must always identify themselves and the company they represent. At a minimum, disclosure should also include the following:

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- The investment is not FDIC-insured;
- The value of the investment may fluctuate;
- The return on the investment is not guaranteed; and
- Loss of the principal investment is possible.

OTS strongly encourages that at the time an uninsured product is sold, the customer receive and sign a one-page unambiguous certification that acknowledges the characteristics of, and disclosure received about, the uninsured product. This safeguard should be observed for all sales that occur on association premises and any sales resulting from saving association customer referrals. The form should be substantially similar to the example in Attachment A. OTS requires a signed certification form for all sales of an association's (or its affiliate's) securities that occur on the association's premises as provided in 12 C.F.R. 563.76.

Savings associations may not permit uninsured products with a name identical to the savings association, except for conversion stock, to be offered or sold on its premises.

Savings associations should adopt a policy governing savings association customer referrals and the release of customer information. Any referral of customers by savings association personnel to a sales representative should be made in a manner that alerts the customer to the fact that the investment products offered are not guaranteed by the savings association and are not federally insured.

While the OTS regulations at 12 C.F.R. Section 545.74(c)(4)(i)(B) specifically address advertising by service corporations offering securi-

ties brokerage services, the principles underlying this regulation should be applied to all sales of uninsured products conducted on the association's premises. These provisions require that advertisements of an uninsured product (which includes promotional materials) identify the company offering the uninsured product, and not the association, as the seller. Also, advertising by the service corporation or other third party must not appear to be that of the savings association. In addition, these provisions prohibit the use of the savings association logo (except for products issued by the association, such as conversion stock) on uninsured products.

Compensation

Employees of the savings association should not receive a fee for referrals if the compensation is dependent upon a sale of the investment product. In any event, referral fees paid to association personnel should be nominal.

Sales Training

Savings association management should ensure that sales personnel are well-trained, especially with respect to making adequate, accurate and appropriate representations to the association's customers. Savings association management should ensure that all persons involved in making offers or sales of uninsured products receive prior sales training by counsel knowledgeable in applicable regulations or persons experienced and appropriately licensed in selling the uninsured product(s). The sales training should cover the manner in which sales are to be conducted, what may be said to the potential investors in connection with offers or sales, and, when appropriate, the restriction that a sales person offering under-

written securities can respond only to questions covered by the offering materials. The training should be designed to prevent the misstatement of material facts, the use of overly optimistic or deceptive forecasts, the making of unsuitable recommendations, and the dissemination of any other information that is false or misleading.

Suitability Standards

The savings association should ensure that the seller of uninsured products employs the National Association of Securities Dealers (NASD) "Rules of Fair Practice" as the appropriate reference for determining the suitability of those products to meet the particular needs of individual customers. These rules should be followed even by those entities that do not fall under the purview of the NASD.

In addition, the association should assess periodically, based on established standards, the qualifications of each company that sells the uninsured products on its premises. For instance, the savings association should initially and periodically review the record of regulatory violations by both a company and its sales representatives. We suggest that the savings association require any broker-dealer and its registered representatives to certify periodically that they comply with NASD standards regarding suitability requirements and related Securities and Exchange Commission (SEC) and NASD customer protection rules.

A savings association may wish to consider the following to ensure that suitability standards are observed:

- Require that sales representatives keep a file of all written

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customer complaints and a log of all oral customer complaints and that a copy be periodically provided to the savings association.

- Perform a post audit review of a representative sample of transactions to test the suitability of investment recommendations as well as the satisfaction level of the customer.

Conflicts of Interest

Savings associations should take precautions to detect and avoid actual and potential conflicts of interest. Conflicts of interest may arise between the savings association, any other entity involved in the sale of uninsured products, customers and employees. For example, savings associations may not

offer their own securities or those of an affiliate, except for equity securities issued by the association or an affiliate in connection with a conversion, in the association's offices unless a waiver from the prohibition in 12 C.F.R. 563.76 is obtained. See OTS Thrift Bulletin 23a for more information on the provisions in 563.76.

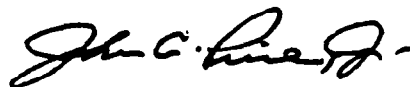
Fiduciary Accounts

Savings associations must comply with all applicable state and federal laws and regulations for transactions that involve the association's fiduciary accounts. For example, the self-dealing provisions of 12 C.F.R. 550.10 prohibit any transaction 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, unless the transaction is lawfully authorized by the instrument creating the relationship, or by court order or local law, or without informed consents from all beneficiaries. This regulation governs the use by a federal savings association of its own brokerage service, or any other entity providing a benefit to the association, and purchases of the association's proprietary or other products for fiduciary accounts.

Also, if an association is acting in a fiduciary capacity for employee benefit accounts, it must comply with applicable provisions of the Employer Retirement Income Security Act of 1974, including its prohibited transaction provisions.

Attachment



John C. Price, Jr.
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Office of Thrift Supervision

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FORM OF CERTIFICATION

I ACKNOWLEDGE THAT THIS [SECURITY / ANNUITY / (OTHER)] IS NOT A DEPOSIT OR ACCOUNT, IS NOT FEDERALLY INSURED, AND IS NOT GUARANTEED BY [insert name of savings association] OR BY THE FEDERAL GOVERNMENT.

If anyone asserts that this [security / annuity / (other)] is federally insured or guaranteed, or is as safe as an insured deposit, I should call the Office of Thrift Supervision Regional Director [insert Regional Director's name and telephone number with area code].

I further certify that, before purchasing the [security / annuity / (other)] from [name of sales company] I received disclosure concerning the nature of the product being offered and a description of the risks involved including: [list briefly the principal types of risk involved, e.g., value of the product may fluctuate, rate of return is not guaranteed, and loss of principal is possible.]

Signature: _____

Date: _____