Guidance on the Sale of Uninsured Products

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, Washington, 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 savings 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 depositary 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:
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.

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)(B) specifically address advertising by service corporations offering securi-
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 Employee Retirement Income Security Act of 1974, including its prohibited transaction provisions.

Attachment

John C. Price, Jr.
Acting Assistant Director for Policy
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 contact 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: __________________________