MEMO# 5689

March 17, 1994

OCC GUIDANCE TO EXAMINERS ON MUTUAL FUND AND OTHER NONDEPOSIT SALES

March 17, 1994 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 13-94 BOARD OF GOVERNORS NO. 26-94 INSTITUTIONAL FUNDS COMMITTEE NO. 8-94 RE: OCC GUIDANCE TO EXAMINERS ON MUTUAL FUND AND OTHER NONDEPOSIT SALES ____ The Office of the Comptroller of the Currency recently issued guidance to its examiners on the sale of mutual funds and other nondeposit products. The OCC's circular is more detailed than the Interagency Statement on bank sales of nondeposit products that the federal banking agencies recently released. Copies of the OCC's circular and press release are attached, and portions of the circular are summarized below. 1. Reliance on NASD Rules; Suitability The circular states that the NASD's Rules of Fair Practice are an appropriate reference for compliance, training, advertising and suitability standards. The circular states that a well-documented suitability inquiry can protect a bank from dissatisfied customers who threaten litigation, and the OCC may view banks that do not have appropriate suitability procedures to be engaging in an unsafe and unsound practice. If the examiner determines that customers may have been disadvantaged by unsuitable recommendations, the examiner should discuss appropriate corrective action, including a full explanation to customers and an offer to rescind the trade, an independent audit, or other action agreed upon with the bank. 2. Common Names Banks may not offer nondeposit investment products with a name identical to the bank's name and examiners should "criticize" sales programs in which fund names are so similar that even mitigating circumstances are unlikely to eliminate customer confusion. The potential for customer confusion arising from similar names can depend on the context in which the sales are taking place. For example, it may be inappropriate for the First National Bank to offer a fund named "FNB Money Market Fund" if the bank also offered an insured deposit product named "FNB Money Market Account." 3. Disclosure Examiners should determine that banks conspicuously disclose that noninsured products are not FDIC-insured or obligations of or guaranteed by the bank, and that they involve investment risks including the possible loss of principal. This disclosure must be included in, among other things, confirmations and periodic statements that include the name or logo of the bank or an affiliate. Examiners also should determine whether a sales program includes any representation concerning SIPC or other insurance. Claims about "no fees" or "no charges" are inaccurate if the bank collects fees for investment advisory or shareholder services. In such a case, the bank could claim that there are no "sales" charges and inform readers that a description of other charges is contained in the prospectus. 4. Fiduciary Accounts The principles under OCC Rule 9.12 and ERISA, governing the purchase for fiduciary accounts of securities of an organization with which there exists certain relationships, apply to the purchase of bank-advised mutual funds and private label funds. The purchase and retention of these funds for fiduciary accounts must be appropriate for each account. 5. Selection of Mutual Funds The circular provides a discussion of how products are selected by "well-managed banks." The circular states that as "a general practice" banks offer at least one money market fund, a U.S. government bond fund, an equity fund, and a tax-exempt bond fund. When deciding which funds to offer, managers generally select funds according to (among other things) the stability of asset values over time, yield, specialized ratings or rankings, net asset value versus total return, expenses, and turnover. Bank management also must consider the issuer's contingency plans for handling unusual surges in redemptions. Paul Schott Stevens General Counsel Attachment

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