INVESTMENT COMPANY INSTITUTE

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OCC GUIDANCE ON THE SALE OF MUTUAL FUNDS AND OTHER NONDEPOSIT PRODUCTS

July 19, 1993 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 15-93 BOARD OF GOVERNORS NO. 62-93 TASK FORCE ON BANK SALES ACTIVITIES RE: OCC GUIDANCE ON THE SALE OF MUTUAL FUNDS AND OTHER NONDEPOSIT PRODUCTS ____ The Office of the Comptroller of the Currency recently issued a guidance circular to national banks on the sale of nondeposit investment products, including mutual funds. The OCC's circular and press release are attached. 1. Bank Responsibilities The circular applies to bank-related retail sales of nondeposit investment products (such as mutual funds), including sales by bank employees, sales by nonemployees on bank premises (including telephone sales and mailings from bank premises), and sales from customer referrals when the bank receives a benefit for the referral. The circular requires bank directors to evaluate the risks posed by these sales and to adopt self-regulatory policies and procedures to ensure compliance with the law and the circular. The circular states that the NASD's Rules of Fair Practice are an appropriate reference in constructing a compliance program for bank-related sales by non-NASD members. The circular also states that the OCC's examination authority covers all bank-related retail sales operations, including sales by other entities. 2. Program Management The circular encourages banks to adopt a sales program statement, which, at a minimum, should address (1) the supervision of personnel involved in the sales program; (2) the role of other entities selling on bank premises, including supervision of selling employees; (3) the types of products sold, and (4) policies governing the permissible uses of bank customer information. 3. Setting of Retail Nondeposit Sales The circular encourages bank management to take steps to separate the retail deposit-taking and retail nondeposit sales functions. Banks should prohibit tellers from offering investment advice and the OCC strongly discourages employees who accept retail deposits from selling retail nondeposit investment products. If an employee performs both functions, the bank should disclose this dual role to customers. Banks may not offer uninsured retail investment products with a product name identical to the bank's name. 4. Disclosures and Advertising When uninsured investment products are sold or marketed to retail customers, there must be conspicuous disclosure that the 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. The circular states that it is appropriate to obtain signed customer acknowledgements of such disclosure when the nondeposit investment account is opened. These disclosures should be featured conspicuously in all written or oral sales presentations, advertising, prospectuses, and periodic statements that include information on both deposit and nondeposit products. The bank also should disclose any advisory or other relationship between the bank and any affiliate involved in providing the nondeposit investment product and the existence of any early withdrawal penalties, surrender charge penalties, and deferred sales charges. 5. Suitability; Training; Compensation At a minimum, suitability inquiries should be made and responses documented consistent with the NASD's Rules of Fair Practice. Sales personnel should be properly qualified and adequately trained to sell all bank-related nondeposit investment products; securities industry or other professional qualification training are appropriate references. Compensation programs should not operate as an incentive for salespeople to sell retail nondeposit investment products over a more suitable option. If tellers participate in referral programs that include compensation features, banks should not base the compensation on the success of the sale. 6. Fiduciary Accounts; Compliance Program Banks must comply with all applicable state and federal restrictions on transactions involving the bank's fiduciary accounts. At a minimum, compliance programs should monitor customer complaints and review periodically customer accounts to detect and prevent abusive practices. Thomas M. Selman Assistant Counsel Attachment

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