

**MEMO# 5152**

September 15, 1993

# **OTS GUIDANCE ON THE SALE OF MUTUAL FUNDS AND OTHER UNINSURED PRODUCTS**

September 15, 1993 TO: BANK INVESTMENT MANAGEMENT MEMBERS NO. 22-93 BOARD OF GOVERNORS NO. 79-93 TASK FORCE ON BANK SALES ACTIVITIES RE: OTS GUIDANCE ON THE SALE OF MUTUAL FUNDS AND OTHER UNINSURED PRODUCTS

The Office of Thrift Supervision recently issued a bulletin to thrift directors and management on the sale of uninsured products, including mutual funds, on the premises of savings associations or sold as a result of a savings association customer referral. As we previously informed you, the Institute recently submitted proposed guidelines on bank mutual fund activities to the federal banking agencies. (See Memorandum to Board of Governors No. 63-93, Bank Investment Management Members No. 16-93, and Task Force on Bank Sales Activities, dated July 21, 1993.) The Office of the Comptroller of the Currency and the Federal Reserve Board have issued statements on this subject. (See Memorandum to Board of Governors No. 62-93, Bank Investment Management Members No. 15-93, Task Force on Bank Sales Activities, dated July 19, 1993; Memorandum to Bank Investment Management Members No. 13-93 and Board of Governors No. 57-93, dated June 25, 1993.) A copy of the OTS's bulletin is attached.

1. Sales Techniques and Disclosures The bulletin states that at a minimum, sales representatives should disclose that the investment is not FDIC-insured, the value of the investment may fluctuate, the return on the investment is not guaranteed, and that loss of principal is possible. OTS strongly encourages thrifts to obtain customer certification of this disclosure. (A form of certification is attached to the bulletin.) A certification is required for all sales of securities of the savings association or its affiliate on association premises. Savings associations generally may not permit the offer or sale on their premises of uninsured products with a name identical to the savings association's name. Any customer referrals to a sales representative should alert the customer to the fact that the investment products are not guaranteed by the savings association and are not federally insured. Advertisements of an uninsured product must identify the company offering the product, and not the association, as the seller. Third-party advertising must not appear to be that of the association and the savings association logo generally may not be used on uninsured products.

2. Compensation Association employees should not receive a fee for referrals if the compensation depends upon the sale of the investment product. In any event, referral fees should be nominal.

3. Sales Training Management should ensure that sales personnel are well-trained. Sales training should cover the manner in which sales are to be conducted, what may be said to potential investors, and, when appropriate, the restriction that a sales person offering underwritten securities can respond only to questions covered by the offering materials. The training should be designed to prevent material misstatements,

overly optimistic forecasts, unsuitable recommendations, and the dissemination of any false or misleading information. 4. Suitability Standards The NASD's Rules of Fair Practice are the appropriate reference for suitability determinations. The association should periodically assess the qualifications of each company that sells the uninsured products on its premises. The association may wish to require that sales representatives keep a file of all customer complaints and perform a post-audit review of a representative sample of transactions. 5. Conflicts of Interest Associations should take precautions to detect and avoid conflicts of interest. 6. Fiduciary Accounts Associations must comply with all applicable state and federal law for transactions that involved fiduciary accounts. Thomas M. Selman  
Assistant Counsel Attachment

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