

IX. Retail Sales — Investments

IRA and KEOGH Accounts

Where the bank offers self-directed IRA or Keogh accounts, the Interagency Statement generally applies,¹⁷ except with respect to the suitability guidelines.¹⁸ In addition, the following management and internal controls apply. Examiners should verify that:

- Asset and Accounting Controls
 - Customer assets are segregated from bank assets and from other account assets;
 - Accounting records reflect segregation of accounts; and
 - Accounting controls facilitate proper income reporting, record asset types, and identify individual instruments.
- Documentation
 - Documentation clearly identifies and supports each account.
NOTE: IRA documentation should include, at a minimum, the required IRS trust/custodian agreement (Form 5305, 5305A, or equivalent), consumer disclosure agreement, signature card(s), and beneficiary designation.
- Illegal Investments
 - Illegal investments are not permitted, regardless of any contrary customer instructions.
 - IRA funds are not used for certain insider transactions, including:
 - Loans to the account sponsor or beneficiaries.
 - Collateral for loans to the account sponsor or beneficiaries.
 - Purchasing assets from the account sponsor, beneficiaries, or custodian bank.
 - Selling assets to the account sponsor, beneficiaries, or custodian bank.
 - Investments in debt instruments of the custodian bank or its holding company.
 - Investments in equity securities of the custodian bank or its holding company, unless acquired from an independent third-party at fair market value.
- Broker Selection
 - Broker selection is based upon two principles:
 - Management selects the best broker for the account.

- Brokers are selected based solely on the combination of lowest possible commission and best possible order execution.

NOTE: Management may not select a broker based on insider relationships, personal relationships, compensation of any type, or solely due to community ties (SEC Rule 28(e)).

- Bank Brokerage
 - The bank uses its own brokerage operations only when:
 - Management satisfies securities laws relative to broker selection.
 - The customer receives full written disclosure (pursuant to FDIC General Counsel’s Opinion Number Six) of the bank’s or affiliate’s relationship to the broker and all compensation that the bank will earn.
 - The account agreement expressly authorizes the specific activity.
 - The bank complies with Employee Retirement Income Security Act (ERISA) and Internal Revenue Code provisions stipulating that the bank must either charge no fees, or only charge fees that recover direct costs.
 - The bank automatically uses its brokerage for all transactions unless requested to do otherwise, but provides 30-day advance notice to accounts of all fee increases and permits accounts to immediately cease using the bank’s brokerage without penalty.

Documenting the Examination

Findings should be documented in the workpapers and incorporated in the report of examination as appropriate. In addition, record the information about the review and analysis of retail investment sales activities in SOURCE under the tabbed section labeled “NDP Sales.”

When a bank does not adhere to the Interagency Statement, these findings must be recorded in SOURCE under the “NDP Sales” tab, “7: Inv Findings” sub-tab. Examiners should also ensure that a violation code for each violation of FDIC Part 344 or the Treasury Regulations 403.5(d) and 450 is recorded in the system.

References

Statutes

Gramm-Leach-Bliley Act
Title II – Functional Regulation
15 USC 78c

fdic01.prod.fdic.gov/division/dsc/cra/glba/

¹⁷ The Interagency Statement does not apply to self-directed IRAs that are invested entirely in insured deposits or that are part of a formal trust agreement (trustee accounts).

¹⁸ Because self-directed accounts permit account holders to select their own investments, no investment recommendations should be solicited and no suitability issues should arise. However, an account is not truly self-directed if the bank offers investment advice to the customer.

Government Securities Act of 1986
Title I, Subchapter A – Regulations Under Section 15C of the Securities Exchange Act of 1934
Title II, Subchapter B – Regulations Under Title II of the Government Securities Act of 1986
15 USC 78o-5(b)(1)(A), (b)(2), (b)(3)(B)
31 USC 3121, 911;

FDIC Regulation

FDIC Part 344 – Recordkeeping and Confirmation Requirements for Securities Transactions
12 CFR 344
www.fdic.gov/regulations/laws/rules/2000-6400.html#2000part344

Treasury Regulations

Treasury Regulations Part 403.5(d) – Protection of Customer Securities and Balances; Custody of Securities Held by Financial Institutions that are Government Securities Brokers and Dealers
17 CFR 403.5(d)
www.fdic.gov/regulations/laws/rules/8000-900.html#8000dot403.5

Treasury Regulations Part 450 – Custodial Holdings of Government Securities by Depository Institutions
17 CFR 450
www.fdic.gov/regulations/laws/rules/8000-1000.html#8000dot450

Department of Treasury Staff Interpretations of Government Securities Regulations
www.publicdebt.treas.gov/gsr/gsrsecrg.htm#interpretations
www.fdic.gov/regulations/laws/rules/8000-1100.html#8000dt-1

Interagency Policy

The Interagency Statement on Retail Sales of Nondeposit Investment Products, February 15, 1994; and the Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
www.fdic.gov/regulations/laws/rules/5000-4500.html

Financial Institution Letters

FIL 38-2002: Credit Risks Arising From Bank Investment Securities and Custodial Accounts Held at Securities Broker-Dealers
www.fdic.gov/news/news/financial/2002/fil0238.html

FIL 80-98: Nondeposit Investment Products and Recordkeeping Requirements Questions and Answers
www.fdic.gov/news/news/financial/1998/fil9880.html

FIL 22-98: FDIC Adopts FFIEC's Modified Policy Statement on Repurchase Agreements
www.fdic.gov/news/news/financial/1998/fil9822.html

FIL 107-96: Rescission of the FDIC Statement of Policy on Retail Repurchase Agreements
www.fdic.gov/news/news/inactivefinancial/1996/fil96107.html

FIL 66-95: Overnight Hold-In-Custody Repurchase Transactions
www.fdic.gov/news/news/financial/1995/fil9566.html

FIL 9-94: Interagency Statement on the Retail Sales of Nondeposit Investment Products

Regional Director Memoranda

DCA RD Memo 01-005: Insurance and Nondeposit Investment Products: Transfer of Supervisory Responsibilities from DOS to DCA
Provides additional guidance about information sharing with NASD, including a copy of the agreement between the banking agencies and the NASD.
<http://fdic01/division/dsc/memos/memos/direct/64009601.pdf>

FDIC Legal Advisory Opinions

Advisory Opinion 83-21: Insured Nonmember Bank May Participate in Investment Services Program Without Violating the Glass-Steagall Act
www.fdic.gov/regulations/laws/rules/4000-300.html

Advisory Opinion 86-34: Plan to Make Mutual Funds Available to Bank's Customers

Advisory Opinion 86-36: Sale of Securities and Mutual Funds on Bank Premises

Advisory Opinion 87-13: Brokerage Services on Premises of State-Chartered Banks

Advisory Opinion 88-42: Disclosure Requirements for Bank Securities Activities

Advisory Opinion 88-43: Unrelated Third Party Non-Banking Activities on Insured Nonmember Bank Premises

Advisory Opinion 89-2: Insured Nonmember Bank Participation in Investment Securities Program

Advisory Opinion 92-48: Insured Nonmember Bank May Participate in Brokerage Networking Program Without Violating Glass-Steagall Act

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Advisory Opinion 92-55: Applicability of 12 CFR Part 344 to Brokerage Networking Program

Advisory Opinion 92-57: Explanation of 12 CFR Part 344 (Recordkeeping and Confirmation Requirements for Securities Transactions)

Advisory Opinion 92-74: Whether Bank May Act as Agent for Sale of Fixed Rate Annuities and Permit Sale of Mutual Funds on Its Premises Through “Dual Employees” and Registered Broker-Dealer, October 29, 1992

Advisory Opinion 94-30: Application of §344.4(a)(2) Which Establishes Recordkeeping and Confirmation Requirements for Securities Transactions

Advisory Opinion 94-33: Guidance Concerning the Retail Sale of Mutual Funds and Other Non-Deposit Investment Products Through a Securities Brokerage Service

Advisory Opinion 94-53: Application of Section 344.4: Sale of Securities Through Banks

Advisory Opinion 95-18: Custodial Holdings of Government Securities Held for Customers by Depository Banks

Advisory Opinion 95-37: Whether Post-Trade Confirmation and Matching Messages Transmitted Through an Electronic Trade Confirmation System Meet the Requirements of FDIC Part 344

Advisory Opinion 96-1: Interpretation of the Department of Treasury Regulations Implementing the Government Securities Act

Advisory Opinion 00-2: Would Certain Sweep Accounts Violate the Federal Deposit Insurance Act