Thrift Bulletin

Handbook: **Thrift Activities**
Subject: **Securities Brokerage**

Section 640
TB 23-3

October 13, 1995

Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products (Interagency Statement)

Summary: The federal banking and thrift regulatory agencies issued joint interpretations of the Interagency Statement on September 12, 1995. These joint interpretations clarify the Interagency Statement, and provide a disclosure alternative. OTS issued the Interagency Statement as Thrift Bulletin 23-2 (TB 23-2).

For Further Information Contact: Your regional office or Supervision Policy (Thrift Policy), OTS, Washington, DC.

Thrift Bulletin 23-3

These joint interpretations provide clarification on the definition of "retail" sales and the types of sales that are covered by the Interagency Statement in response to a request from the American Bankers Association. In addition, the banking agencies provide for a streamlined disclosure in limited situations.

This bulletin clarifies the guidance contained in TB 23-2 which is still in effect.

Attachment

—John F. Downey
Director of Supervision

OFFICE OF THE COMPTROLLER OF THE CURRENCY
OFFICE OF THRIFT SUPERVISION
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
FEDERAL DEPOSIT INSURANCE CORPORATION

JOINT INTERPRETATIONS OF THE INTERAGENCY STATEMENT ON RETAIL SALES OF NONDEPOSIT INVESTMENT PRODUCTS

The Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Reserve Board (FRB) and the Federal Deposit Insurance Corporation (FDIC) (banking agencies) have collectively responded to an American Bankers Association (ABA) letter regarding the application of the Interagency Statement on Retail Sales of Nondeposit Investment Products (the Interagency Statement) issued February 15, 1994. A copy of the banking agencies' response is attached.

The banking agencies are also taking this opportunity to communicate our position regarding abbreviated disclosures and to clarify certain instances where we believe that it is not necessary to provide the disclosures outlined in the Interagency Statement. The use of abbreviated disclosure under the circumstances described offers an optional alternative to the longer disclosures prescribed by the Interagency Statement.

RESPONSE TO THE ABA

As more fully explained in the attached letter, the banking agencies' response to the ABA addresses the following:

- Retail sales include (but are not limited to) sales to individuals by depository institution personnel or third party personnel conducted in or adjacent to a depository institution's lobby area.

- Sales of government and municipal securities made in a depository institution's dealer department located away from the lobby area are not subject to the Interagency Statement.

- The Interagency Statement generally does not apply to fiduciary accounts administered by a depository institution. However, for fiduciary accounts where the customer directs investments, such as self-directed individual retirement accounts, the disclosures prescribed by the Interagency Statement should be provided.

- The Interagency Statement applies to affiliated broker dealers when the sales occur on the premises of the depository institution. The Statement also applies to sales activities of an affiliated broker dealer resulting from a referral of retail customers by the depository institution.

DISCLOSURE MATTERS

The banking agencies would like to address several disclosure matters with respect to the Interagency Statement. In particular, the agencies agree there are limited situations in which the disclosure guidelines need not apply or where a shorter logo format may be used in lieu of the longer written disclosures called for by the Interagency Statement.

The Interagency Statement disclosures do not need to be provided in the following situations:

- radio broadcasts of 30 seconds or less;
- electronic signs[1]; and
- signs, such as banners and posters, when used only as location indicators.

Additionally, third party vendors not affiliated with the depository institution need not make the Interagency Statement disclosures on nondeposit investment product confirmations and in account statements that may incidentally, with a valid business purpose, contain the name of the depository institution.

The banking agencies have been asked whether shorter, logo format disclosures may be used in visual media, such as television broadcasts, ATM screens, billboards, signs, posters, and in written advertisements and promotional materials, such as brochures. The text of an acceptable logo format disclosure would include the following statements:

- Not FDIC Insured
- No Bank Guarantee
- May Lose Value

---

[1] "Electronic signs" may include billboard-type signs that are electronic, time and temperature signs, and ticker tape signs. Electronic signs would not include such media as television, on line services, or ATM's.

The logo format disclosures would be boxed, set in bold face type, and displayed in a conspicuous manner. The full disclosures prescribed by the Interagency Statement should continue to be provided in written acknowledgement forms that are signed by customers. An example of an acceptable logo disclosure is:

NOT FDIC - INSURED	**May lose value** **No bank guarantee**

Questions on the Interagency Statement may be submitted to:

OCC -- Office of the Chief National Bank Examiner, Capital Markets Group, (202) 874-5070.

OTS -- Office of Supervision Policy (202) 906-5740; Business Transactions Division, (202) 906-7289

FRB -- Division of Banking Supervision and Regulation, Securities Regulation Section, (202) 452-2781; Legal Division, (202) 452-2246.

FDIC-- Office of Policy, Division of Supervision, (202) 898-6759; Regulation and Legislation Section, Legal Division (202) 898-3796.

Board of Governors of the Federal Reserve
Federal Deposit Insurance Corporation
Office of the Comptroller of the Currency
Office of Thrift Supervision

Ms. Sarah A. Miller
Senior Government Relations Counsel
Trust and Securities
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Dear Ms. Miller:

This is in response to your letters to the staffs of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (banking agencies) seeking clarification of the application of the February 15, 1994, Interagency Statement on Retail Sales of Nondeposit Investment Products. To promote uniformity in the supervision of these activities, the agencies along with the Office of Thrift Supervision (banking agencies) are providing this joint response.

The Interagency Statement was issued to address the expansion by depository institutions of activities involving the recommendation and sale to retail customers of nondeposit investment products, including mutual funds and annuities as well as stocks and other investment products. The Statement focuses on issues that pertain specifically to the retail sale of investment products to customers on depository institution premises, and seeks to avoid customer confusion of such products with those that are FDIC insured primarily through disclosure and separation of sales of investment products from other banking activities. In addition, the Statement provides guidance to depository institutions with respect to sales practices that are consistent with those applicable to registered securities brokers and dealers.

You suggest that the application of the Statement be limited to "bank retail sales of mutual funds and annuities." If this approach is not accepted by the banking agencies, you suggest that the Statement should not apply to sales of nondeposit investment products by a depository institution's government and municipal securities dealer departments, to a trust department or to an affiliated trust company, to custodial accounts, or to a bank-affiliated stand alone brokerage operation.

Limitation to Sales of Mutual Funds and Annuities

Although some depository institutions limit their sales of nondeposit investment products to mutual funds and annuities, others advertise and offer a fuller range of securities brokerage or financial advisory services to retail customers. The banking agencies are concerned that conducting these activities on bank premises also could engender customer

confusion and raise concerns about safe and sound banking practices. Thus, it would not be appropriate to limit the application of the Statement to mutual funds and annuities as you requested.

Sales From Lobby Area Presumed Retail

The banking agencies agree with your assessment that retail sales include (but are not limited to) sales to individuals by depository institution personnel or third party personnel conducted in or adjacent to, a depository institution's lobby area. Sales activities occurring in another location of a depository institution may also be retail sales activities covered by the Interagency Statement depending on the facts and circumstances.

Government or Municipal Securities Dealers or Desks

Sales of government and municipal securities made from a depository institution's dealer department away from the lobby area would not be subject to the Interagency Statement. Such departments already are regulated by the banking agencies and are subject to the statutory requirements for registration of government and municipal securities brokers and dealers. Further, such brokers and dealers are subject to sales practice and other regulations of the Department of the Treasury or the Securities and Exchange Commission, and of designated securities self regulatory organizations.

Fiduciary Accounts, Affiliated Trust Companies and Custodian Accounts

In general, the banking agencies agree with your view that the Interagency Statement does not apply to fiduciary accounts administered by a depository institution. However, the disclosures prescribed by the Interagency Statement should be provided to non-institutional customers who direct investments for their fiduciary accounts, such as self directed individual retirement accounts. Nevertheless, disclosures need not be made to customers acting as professional money managers. Fiduciary accounts administered by an affiliated trust company on the depository institution's premises would be treated the same way as the fiduciary accounts of the institution.

With respect to custodian accounts maintained by a depository institution, the Interagency Statement does not apply to the activities described in your letter, e.g., collecting interest and dividend payments for securities held in the accounts and handling the delivery or collection of securities or funds in connection with a transaction.

Affiliated Stand Alone Broker Dealers

Finally, you ask how the Interagency Statement applies to bank affiliated stand alone broker dealers. The Statement applies specifically to sales of nondeposit investment products on the premises of a depository institution, e.g., whenever sales occur in the lobby area. The Statement also applies to sales activities of an affiliated broker dealer resulting from a referral of retail customers by the depository institution to the broker dealer.

We appreciate the views of the ABA in helping to clarify the scope of the Interagency Statement. We hope that this letter will provide additional guidance to the industry in complying with the Statement in a safe and sound manner consistent with principles of customer protection.

Sincerely,

James I. Garner, Deputy Associate Director
Division of Banking Supervision & Regulation
For: Board of Governors for the
Federal Reserve System

Nicholas J. Ketcha, Jr., Acting Director
Division of Supervision
For: Federal Deposit Insurance
Corporation

David P. Apgar
Senior Policy Advisor
For: The Office of the Comptroller
of the Currency

John F. Downey
Director of Supervision
For: Office of Thrift Supervision

Dated: September 12, 1995