Comptroller's Handbook

Safety and Soundness

Capital Adequacy (C) | Asset Quality (A) | Management (M) | Earnings (E) | Liquidity (L) | Sensitivity to Market Risk (S) | Other Activities (O)

Retail Nondeposit Investment Products

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References to reputation risk have been removed from this booklet as of March 20, 2025. Removal of reputation risk references is identified by a strikethrough. Refer to OCC Bulletin 2025-4.

The OCC does not use the expanded procedures in this booklet for community banks. For community banks, the OCC will only use the core assessment standards in the "Community Bank Supervision" booklet of the Comptroller's Handbook. Refer to OCC Bulletin 2025-25.

Office of the Comptroller of the Currency

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Introduction

The Office of the Comptroller of the Currency's (OCC) *Comptroller's Handbook* booklet, "Retail Nondeposit Investment Products," is prepared for use by OCC examiners in connection with their examination and supervision of national banks, federal savings associations (FSA), and federal branches and agencies of foreign banking organizations (collectively, banks). Each bank is different and may present specific issues. Accordingly, examiners should apply the guidance in this booklet consistent with each bank's individual circumstances. When it is necessary to distinguish between them, national banks, FSAs, and covered savings associations are referred to separately.[1]

This booklet provides comprehensive guidance for bank examiners on activities involving the recommendation or sale of nondeposit investment products to retail customers. This booklet explains the risks inherent in banks' retail nondeposit investment product (RNDIP) sales programs and provides a framework for banks to manage those risks. This booklet provides expanded examination procedures for evaluating banks' RNDIP sales activities. These expanded procedures supplement the core assessment standards in the "Large Bank Supervision" and "Community Bank Supervision" booklets of the *Comptroller's Handbook*. Examiners should use the expanded examination procedures when specific products, services, or risks warrant review beyond the core assessment.

This booklet focuses on the regulatory requirements that apply directly to banks in conducting RNDIP sales activities and the OCC's policy guidance related to risk management practices. Given banks' reliance on securities broker-dealers and insurance agencies in offering RNDIP sales programs, this booklet also recognizes the established regulatory regimes and requirements of the U.S. Securities and Exchange Commission (SEC) and the state insurance regulators in enhancing consumer protection for retail customers.

Overview

Many banks recommend or sell nondeposit investment products either to retail customers directly or more commonly through arrangements with affiliated or unaffiliated third parties. Banks engage in these activities to enhance customer relationships through expanded product offerings, increase fee income, and remain competitive with other banks and financial service providers. Examiners should determine whether a bank operates its RNDIP sales programs safely and soundly to properly protect customers from harm and to control the bank's risk exposures. The OCC expects the bank's board to hold bank management accountable for implementing effective program management over the RNDIP sales activities, including appropriate oversight of affiliated or unaffiliated third parties, such as broker-dealers. Safe

[1] Generally, references to "national banks" throughout this booklet also apply—unless otherwise specified—to federal branches and agencies of foreign banking organizations and U.S. banks engaged in retail nondeposit investment products sales activities offshore. Refer to the "Federal Branches and Agencies Supervision" booklet of the *Comptroller's Handbook* for more information regarding applicability of laws, regulations, and guidance to federal branches and agencies. Certain FSAs may make an election to operate as covered savings associations. For more information, refer to OCC Bulletin 2019-31, "Covered Savings Associations Implementation: Covered Savings Associations," and 12 CFR 101, "Covered Savings Associations."

and sound banking practices are needed to minimize the possibility of customer confusion associated with offering RNDIPs on bank premises, through bank call centers, or through electronic delivery platforms, including bank websites and mobile applications (apps). Of particular concern is the potential for customer confusion between insured bank deposits and uninsured RNDIPs.

Examiners should determine whether the bank maintains processes that clearly and fully inform retail customers of the nature and risks associated with RNDIPs. In particular, accurate information must be provided to retail customers that RNDIPs are not insured by the Federal Deposit Insurance Corporation (FDIC) and are not deposits or other obligations or guarantees of the bank. Disclosures also typically include the investment risks, including possible loss of the principal amount invested. Banks or broker-dealers that materially mislead customers or provide inaccurate representations in connection with offers and sales of securities could face potential liability under the antifraud provisions of the federal securities laws and the safety and soundness and consumer protection provisions of federal banking laws, as applicable.

Bank direct sales of RNDIPs are restricted to securities activities that banks are authorized to conduct without being subject to the broker-dealer rules and registration requirements under the Securities Exchange Act of 1934 (Securities Exchange Act). The Gramm–Leach–Bliley Act of 1999 (GLBA) amended the Securities Exchange Act by replacing what had been a blanket exemption for banks from broker-dealer registration requirements with specific exceptions. These specific exceptions authorize banks to engage in limited securities activities without being considered broker-dealers. See the "GLBA and Regulation R" section of this booklet for a list of the exceptions.

The GLBA's specific securities activities registration exceptions apply only to bank activities. Bank and holding company subsidiaries that are broker-dealers must register with the SEC. Banks may enter into arrangements with registered broker-dealers to offer brokerage services on or off bank premises and including through a bank's website or mobile app. Most banks' RNDIP sales programs offer a broad range of products and services through various delivery channels that use a variety of third parties. These third parties may include either affiliated or unaffiliated securities broker-dealers, insurance agencies, and registered investment advisers (RIA). A bank using third parties for its RNDIP sales program should implement effective risk management to safeguard its customers as well as the bank itself. The use of affiliated or unaffiliated third parties does not relieve the bank of the responsibility to take reasonable actions to determine whether the third parties' activities meet regulatory requirements.

A bank engaged in an RNDIP sales programs is exposed to a variety of risks that if not properly managed can adversely affect the bank's earnings, capital, ~~and reputation~~ and could result in customer harm. As detailed in the "Risks Associated With RNDIP Sales Programs" section of this booklet, the risks generally associated with a bank's RNDIP sales activities include compliance, operational, strategic~~, and reputation~~ risks. Credit risk may also exist in banks' RNDIP sales programs that involve certain activities, such as providing customers margin lending services.

Scope of Retail Sales

This booklet generally applies to recommendations or sales of nondeposit investment products to retail customers that fall within the scope of the "Interagency Statement on Retail Sales of Nondeposit Investment Products" (Interagency Statement), which is included in appendix A of this booklet, and OCC Bulletin 1994-13, "Nondeposit Investment Sales Examination Procedures: Interagency Statement." Retail sales include recommendations and sales to individuals

- by bank personnel or employees of an affiliated or unaffiliated third party that are conducted in or adjacent to a bank's lobby area.
- from a referral of retail customers by a bank to an affiliated broker-dealer.
- from a referral of retail customers by a bank to an unaffiliated third party when the bank receives a benefit for the referral.
- from call centers conducted by bank employees or from a bank's premises.
- initiated by mail from a bank's premises (including by electronic means, such as through a bank's website or mobile app).

Retail customers include individuals who are provided recommendations and sales of RNDIPs in the locations identified or under the circumstances mentioned previously. In addition to individual customers, "individuals" covered by the Interagency Statement include small businesses, partnerships, and high net worth (HNW) or other potentially sophisticated customers. Depending on the specific facts and circumstances, sales activities occurring in a location of a bank beyond the lobby area may also be considered retail sales activities covered by this booklet.

Additionally, RNDIP-related regulatory requirements apply to other types of bank customers. For example, the GLBA's exception covering a bank's third-party arrangements with broker-dealers is broader in scope than the Interagency Statement, as this GLBA exception does not distinguish between retail and nonretail customers. Conversely, provisions of 12 CFR 14, "Consumer Protection in Sales of Insurance," that apply to banks, tend to have a narrower scope. 12 CFR 14 defines "consumer" as "an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes from a covered person." A "covered person" generally means a bank or any other person engaged in such sales activities at a bank office or on behalf of a bank. The SEC's "Regulation Best Interest" at 17 CFR 240.15l-1 also includes a narrower definition defining "retail customer" to mean a natural person, or the legal representative of such natural person, who (1) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer, and (2) uses the recommendation primarily for personal, family, or household purposes.[2]

Examiners should use this booklet when evaluating U.S. banks engaged in RNDIP sales activities offshore, as well as any local jurisdiction regulatory requirements, to determine

[2] Refer to 17 CFR 240.15l-1(b)(1).

appropriate consumer protections and operation of safe and sound sales programs. Similarly, examiners should use the information in the booklet when evaluating foreign banks' U.S.-based branches and agencies with respect to their RNDIP sales programs.

This booklet generally does not apply to a bank's

- nonretail sales programs that target institutional customers.
- fiduciary accounts administered under its fiduciary authority.
- sales of government and municipal securities conducted in the bank's dealer department located away from the lobby area.
- affiliated broker-dealer activities that are a separate book of business not covered by a written brokerage arrangement with the bank.
- insurance and annuity products that do not have an investment component.[3]

As part of its general responsibilities, the bank should take appropriate steps to avoid potential customer confusion when providing RNDIPs to customers. Although this booklet generally does not apply to fiduciary accounts administered under the bank's fiduciary authority, examiners should determine whether the bank provides appropriate disclosures to noninstitutional customers who direct investments for their own fiduciary accounts, such as self-directed individual retirement accounts (IRA). Refer to the Interagency Statement for more information. Fiduciary accounts administered by an affiliated trust company on the premises of a bank are treated the same way as the fiduciary accounts of such bank.

Types of RNDIPs and Related Services

An RNDIP is any product with an investment component that, in most instances, is not an FDIC-insured deposit. Common RNDIPs include mutual funds, exchange traded funds (ETF), variable and fixed rate annuities, equities, and fixed income securities (taxable and nontaxable). Banks with more extensive sales programs may offer a broader array of RNDIPs that, in addition to the common RNDIP product offerings, may include complex products. Such complex product offerings may include alternative investment strategy mutual funds, hedge funds, real estate investment trusts (REIT), private real estate, private equity, structured products, initial public offerings or primary market offerings, and derivatives, such as put and call options. Additionally, a limited number of banks may offer retail foreign exchange trading directly or through an arrangement with a third party.

Banks' sales programs offer a variety of RNDIP platforms. Some product platforms are "open architecture," as the product set consists only of products that are unaffiliated with the bank or the broker-dealer or is a mixed offering of unaffiliated products and proprietary products. Such proprietary products are issued, underwritten, or managed by the bank, the broker-dealer, or entities affiliated with the bank or broker-dealer. Other product platforms may be more "closed architecture" with a limited menu of options that focus on proprietary offerings. Regardless of the RNDIP platform offered, the bank is expected to implement

[3] For information on bank sales of insurance and annuity products that do not have an investment component, refer to the "Insurance Activities" booklet of the *Comptroller's Handbook*.

effective due diligence processes, which are discussed further in the "Product Selection" section of this booklet.

RNDIP offerings may include the bank's own and affiliated debt and securities. FSAs should be aware of 12 CFR 163.76, "Offers and Sales of Securities at an Office of a Federal Savings Association," which generally prohibits FSAs from offering or selling debt or equity securities issued by the FSA or its affiliate at an office of the FSA. This prohibition applies to offers or sales made directly by the FSA as well as those made through the FSA's arrangement with a broker-dealer. For more information, refer to the "Other Applicable Legal and Regulatory Requirements" subsection of the "Compliance Program" section of this booklet. A national bank is not subject to the same prohibition regarding the sale of its own or its affiliates' debt or equity securities at a bank office. These sales activities at national banks, however, should involve heightened risk controls for consumer protections. Examples of heightened risk controls include establishing product-specific suitability or Regulation Best Interest requirements (as applicable), elevated levels of supervision and surveillance, tailored product training, enhanced customer disclosures, and targeted compliance testing.

A bank's RNDIP platform may include certain deposit instruments covered by FDIC insurance. For example, structured certificates of deposit (structured CD) are deposits issued by banks and distributed by securities broker-dealers and are covered by FDIC insurance up to the applicable limits. Another example of an RNDIP deposit instrument is a deposit sweep account, which is a hybrid offering used commonly for cash management purposes. This type of product periodically sweeps a customer's excess cash out of a demand deposit account and into a short-term earning asset, such as a money market mutual fund (MMMF), commercial paper, bankers' acceptance, repurchase agreement, or master note. FDIC insurance applies to a deposit sweep account when the assets are held in the deposit, but not when such assets are swept into an investment product. OCC Bulletin 2009-19, "Revision to FDIC Rule 12 CFR 360: New Notice Requirements for Sweep Accounts," provides additional details.

RNDIPs may be recommended or sold in connection with the establishment of, or offered in, an existing bank custody account, brokerage account, IRA, college savings plan (529 plan), health savings account, or deposit sweep account.

Insurance-Related Investment Products

Many banks offer retail customers insurance-related investment products as part of their comprehensive product offerings. Such products may include variable and fixed rate annuities, and life insurance contracts with investment components (e.g., whole life, variable life, and universal life products). Variable annuities are securities with insurance components distributed by securities brokers-dealers. State-licensed insurance agents distribute fixed rate annuities and life insurance contracts with investment components. Bank sales of insurance products without an investment component are addressed in the "Insurance Activities" booklet of the *Comptroller's Handbook.*

Banks typically enter into written arrangements with insurance companies or insurance agencies to provide bank customers with insurance products and annuities. Among other

requirements, these sales activities must comply with the consumer protection regulations (12 CFR 14) for the sale of insurance. In some states where banks are not permitted to receive insurance commissions directly, banks may need to set up a subsidiary (licensed by the state insurance agency) so the subsidiary may receive commissions from the sale of insurance products.

Financial Planning and Investment Advice

A bank traditionally provides investment advice to customers for a fee through the bank's trust department. Embedded in a bank's fiduciary business are aspects of financial planning that include retirement, investment, tax, insurance, and estate planning. Bank fiduciary-related activities are subject to extensive regulatory requirements, including 12 CFR 9, "Fiduciary Activities of National Banks," 12 CFR 150, "Fiduciary Powers of Federal Savings Associations," the Employee Retirement Income Security Act (ERISA), and state trust laws. The GLBA preserved a bank's authority to continue offering these traditional fiduciary activities. For more information regarding traditional bank fiduciary activities, refer to the "Asset Management," "Personal Fiduciary Activities," and "Retirement Plan Products and Services" booklets of the *Comptroller's Handbook*.

Some banks establish formal arrangements with broker-dealers to provide investment services specifically to HNW or private banking clients. Banks may engage in these arrangements to provide comprehensive relationship banking to wealthy clients. HNW customers who are offered brokerage services in offices of a bank away from the bank's lobby area usually are not considered "retail" customers. To provide appropriate consumer protections, banks that engage in such arrangements should implement safe and sound risk management standards. Refer to the Interagency Statement and OCC Bulletin 2023-17, "Third-Party Relationships: Interagency Guidance on Risk Management," for examples of safe and sound risk management standards.

In addition to entering into arrangements with broker-dealers, a bank may enter into an arrangement with an RIA for that RIA to offer advisory services to bank customers. While the provision of financial planning services and investment advice to bank customers is not a sale of RNDIPs, the OCC treats these services as if they were the sale of RNDIPs if not directly provided under a bank's fiduciary authority. Therefore, if a bank chooses to provide financial planning or investment advice through an RIA or other provider, the bank should manage the relationship in a safe and sound manner. Refer to the Interagency Statement and third-party relationship guidance contained in OCC Bulletin 2023-17.

The retail brokerage industry has been expanding its services beyond its traditional, commission-based, transactional business to include such customer offerings as financial planning and investment advice. These expanded investment services typically offer customers financial plans and a variety of managed account programs. The managed account offerings may range from customer self-directed wrap accounts with underlying mutual fund investments to fully discretionary financial adviser managed accounts with investments in individual securities. If a broker-dealer provides these investment services to retail customers, Regulation Best Interest requires that the broker-dealer make recommendations

that are in the best interest of its retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interest of the retail customer.[4] Regulation Best Interest imposes more demanding requirements for broker-dealers compared with direct sales by a bank. For more information, refer to the "Best Interest, Suitability, and Sales Practices" subsection of the "Risk Management" section of this booklet. Depending on the extent of investment services provided, the broker-dealer may also be required to register as an RIA and be subject to the fiduciary standard imposed on RIAs by the Investment Advisers Act of 1940 (Advisers Act). A bank that provides these investment services may, depending on the type of account for which the bank is providing such services, need to comply with additional, enhanced client protection standards that require the bank to act as a fiduciary in the client's best interest. These fiduciary requirements include 12 CFR 9 for national banks, and 12 CFR 150 for FSAs, ERISA, and state trust laws.

Other Services Provided

Margin Lending and Securities Lending

A bank, directly or indirectly, through arrangements with affiliated or unaffiliated broker-dealers, may extend credit to retail customers for the purpose of buying or carrying certain securities. Banks extending such credit must meet the requirements of 12 CFR 221, "Credit by Banks and Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock (Regulation U)." This Board of Governors of the Federal Reserve System (FRB) regulation imposes restrictions on banks that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. For more information, refer to the "Margin Lending and Related Securities Lending" subsection of the "Risk Management" section and appendix F of this booklet.

Account Aggregation Services

Account aggregation is a service that gathers information from various websites and presents that information in a consolidated format to the customer. Banks may offer account aggregation services to their customers that includes RNDIP account information. The information gathered can range from publicly available information to personal account information that may include banking and RNDIP data. Typically, a bank provides an aggregation service under its brand name through a third-party service provider. Aggregator banks may also provide links to affiliated and unaffiliated third-party websites that allow consumers to buy securities and insurance products directly. Aggregator banks that compile customers' various account information should be aware of the various requirements that may apply. For more information, refer to OCC Bulletin 2001-12, "Bank-Provided Account Aggregation Services: Guidance to Banks."

[4] See 17 CFR 240.15l-1.

RNDIP Delivery Channels

Banks may use one or multiple channels for delivering RNDIPs to retail customers. Face-to-face customer contact may be provided either by bank employees or through arrangements with affiliated or unaffiliated broker-dealers or other third parties. RNDIP sales programs may include call centers, stand-alone kiosks, online access, and remote access through automatic teller machines (ATM), mobile banking, or other electronic means. These multiple delivery channels allow customers to access full-service brokerage or discount brokerage services that may include customer self-directed day trading ability. These delivery channels may use fully dedicated sales representatives or part-time sales representatives who are employees of the bank, broker-dealer, insurance agency, investment adviser, or some combination of these. Examiners should determine whether bank management properly identifies and manages the risk associated with RNDIP delivery channels.

Banks can, to a very limited extent, sell RNDIPs directly to retail customers without any association or agreement with a broker-dealer or an insurance company. Bank direct RNDIP sales activity has significantly diminished because of the GLBA's enactment. A bank may directly conduct RNDIP securities transactions, but only if authorized by specific GLBA exceptions. These exceptions cover banks that engage in the following securities transactions with their customers: permissible securities transactions; municipal securities; private securities offerings; custody activities; sweep accounts; and a de minimis number of securities transactions. Each of these exceptions contains specific conditions that banks must meet to engage in these narrowly defined securities transactions. For more information, refer to the "Asset Management" booklet of the *Comptroller's Handbook*.

Most bank RNDIP sales programs rely on the GLBA exception from broker registration for third-party arrangements with affiliated or unaffiliated securities broker-dealers. These are commonly called "networking arrangements." Bank-affiliated securities broker-dealers include bank operating or financial subsidiaries, bank holding company nonbank affiliates, and bank service corporations. In accordance with the terms of a written contract between the bank and the broker-dealer, registered representatives associated with the broker-dealer sell RNDIPs to a bank's customers. The registered representatives may be employees or independent contractors of the broker-dealer.

Many bank RNDIP sales programs include fixed rate annuities and life insurance products with investment components. Banks enter into written agreements with either affiliated or unaffiliated insurance companies or agencies to provide these services. These agreements typically authorize a state-licensed sales agent of a particular insurance company to sell fixed rate annuities and life insurance products on the bank's premises or on behalf of the bank. These licensed insurance agents may be employees or independent brokers of an insurance company or agency and are authorized by the agreement to offer such products to bank customers. Variable rate annuities are another common RNDIP that are securities with life insurance features and sold by securities broker-dealers.

Banks may establish similar contractual arrangements with affiliated or unaffiliated RIAs for the provision of investment advisory or financial planning services to the bank's retail

customers. Under these arrangements, the bank authorizes an investment adviser or agent employed by an RIA to provide such services on the bank's premises, or on behalf of the bank.

A bank's arrangement with securities broker-dealers, insurance agencies, and RIAs may entail separate written agreements with each third party for specific products and services. Banks typically establish arrangements with affiliated and unaffiliated third parties that hold multiple securities and insurance-related registrations or licenses. For example, a registered securities broker-dealer may also be registered as an RIA. Additionally, the registered broker-dealer may have an affiliated or contractual arrangement with an unaffiliated state-licensed insurance agency for distributing fixed rate annuities and life insurance products. In this scenario, the bank would be contracting with a third party to provide multiple products and services in various capacities (as a securities broker, RIA, or insurance agent).

A bank employee holding securities or life insurance licenses may be authorized to recommend and sell RNDIPs to the bank's customers in the employee's capacity as an employee of an insurance agency or broker-dealer. These dual employees are bank employees who can also offer customers banking products, such as loans and deposit products. Dual employee arrangements vary by bank and are governed by 12 CFR 7.3001, "Sharing National Bank or Federal Association Space and Employees." Refer to the "Banking Laws and Regulations" section for more detail. Some banks impose substantial restrictions on the type of RNDIPs dual employees are authorized to recommend or sell by limiting the employees' authorized activities and licensing. Other banks may allow dual employees to offer customers a full array of both banking products and RNDIPs, as appropriate to meet the customers' needs and objectives.

A broker-dealer's registered representatives generally have a desk or office at a bank's branch offices. The registered representatives, through the broker-dealer, may offer discount brokerage services or a full range of broker-dealer services. Discount brokerage provides trade execution services at the direction of the customer usually through an electronic platform or through a call center. In a discount brokerage arrangement, the registered representatives offer no investment advice, as they accept only unsolicited transactions. If the broker-dealer offers a full range of services, registered representatives may provide the customer investment advice or solicitations as to which RNDIPs to buy or sell to achieve investment goals. In some cases, a bank's RNDIP sales program may offer RNDIPs through a call center or remote electronic access platforms, such as the internet or a mobile app.

Regulatory Authority and Framework for Banks' RNDIP Sales Activities

A bank's RNDIP sales program is subject to multiple laws and regulations. Such sales programs must comply with the applicable federal and state banking, securities, and insurance regulatory requirements. For a list of the applicable requirements, refer to the "References" section of this booklet.

Banking Laws and Regulations

National banks are expressly authorized under the National Bank Act (12 USC 24(Seventh)) to purchase and sell securities without recourse, solely upon the order, and for the account of customers. FSAs have express authority under section 5(c) of the Home Owners' Loan Act (HOLA), 12 USC 1464(c), to engage in brokerage or to deal in certain types of securities (e.g., government and agency securities and certain mortgage-backed securities). FSAs also have incidental authority under the HOLA to engage in brokerage or deal in various other types of securities, in both cases subject to applicable OCC regulations. Federal securities laws impose restrictions on banks' authority to purchase and sell securities for customers' accounts.

As part of the business of banking under 12 USC 24(Seventh), and as interpreted under 12 CFR 7.1002, "National Bank and Federal Savings Association Acting as Finder," national banks are authorized to act as finders, bringing together interested parties to a transaction. A national bank that acts as a finder may identify potential parties, make inquiries as to interest, introduce or arrange contacts or meetings of interested parties, act as an intermediary between interested parties, and otherwise bring parties together for a transaction that the parties themselves negotiate and consummate.[5] As an activity incidental to an FSA's power under the HOLA and as discussed in 12 CFR 7.1002, FSAs are permitted to act as finders, including by referring customers to a third party and providing services and products indirectly through a third-party discount program. These finder authorities, however, do not authorize a bank to engage in brokerage activities that are not otherwise permissible for the bank.

National banks and FSAs are authorized under 12 CFR 7.3001, "Sharing National Bank or Federal Association Space and Employees," to share space on bank premises and to share bank employees with other businesses. This authority is subject to supervisory conditions and other legal requirements. Supervisory conditions include requiring that the other business is conspicuously, accurately, and separately identified; shared employees clearly and fully disclose their capacity as bankers or agents of the other business that is providing the product and service; the activities of the other business do not adversely affect the bank's safety and soundness; and the shared employees or the other business entity meet applicable licensing and qualification requirements.

Under 12 CFR 7.5010, "Shared Electronic Space," national banks are also permitted to share electronic space, including a co-branded website, with a bank subsidiary, affiliate, or another third party. National banks must take reasonable steps to clearly, conspicuously, and understandably distinguish between products and services offered by the bank and those offered by the bank's affiliated entities or a third party. FSAs are permitted to share electronic space with others under 12 CFR 155.200, "Use of Electronic Means and Facilities."

[5] A national bank may similarly act as a finder through electronic means, including by hosting on the bank's website links to third-party websites and other means allowing potential buyers and sellers to exchange information. See 12 CFR 7.5002, "Furnishing of Products and Services by Electronic Means and Facilities."

Federal Securities Laws

While banks are expressly authorized to purchase and sell securities for customers' accounts, the federal securities laws amended under the GLBA impose restrictions on this authority. After the GLBA's enactment in 1999, the SEC—to maintain regulatory uniformity—extended to FSAs the same treatment as national banks under the Securities Exchange Act. While the GLBA authorizes bank direct sales of RNDIPs, those sales are restricted to transactions that meet specific exceptions. Notably, even before the GLBA, bank direct RNDIP sales activities were limited as banks traditionally contracted with either affiliated or unaffiliated securities broker-dealers to provide brokerage products and services.

The Securities Exchange Act, as amended by the GLBA, is the principal law that applies to banks' sales of RNDIPs conducted by broker-dealers. The Securities Exchange Act requires that persons distributing shares or executing purchases or sale transactions in securities be registered with the SEC as securities broker-dealers. Broker-dealers who sell RNDIPs are regulated and examined by the SEC and the Financial Industry Regulatory Authority (FINRA). FINRA is a self-regulatory organization authorized by the SEC.

Sales of RNDIPs conducted by RIAs are subject to the Investment Advisers Act of 1940 and are primarily regulated by the SEC. In addition to registration with the SEC, the act requires RIAs to comply with antifraud provisions, disclosure obligations, recordkeeping and custody requirements, advertising restrictions, and insider trading procedures. It also sets forth a fiduciary standard of care that requires an adviser to put their client's interests above their own.

Registered securities broker-dealers are subject to the SEC's recordkeeping and confirmation rules for securities transactions and to the uniform net capital rule. Registered broker-dealers are also subject to FINRA's Rules of Fair Practice and professional qualification rules for individuals associated with securities firms. Registered broker-dealers are required to obtain insurance coverage from the Securities Investor Protection Corporation (SIPC) on customers' assets. The SIPC protects customers' assets up to certain limits in the event of a broker-dealer's failure. The SEC and FINRA have issued rules that address networking arrangements between broker-dealers and financial institutions. These rules include the SEC's Rule 701 (Regulation R), which was issued jointly with the FRB (12 CFR 218, "Exceptions for Banks From the Definition of Broker in the Securities Exchange Act of 1934"), and FINRA Rule 3160. For more information, refer to the "Asset Management" booklet of the *Comptroller's Handbook*.

Banks' RNDIP sales programs that involve dual employees of the banks and broker-dealers may be subject to FINRA Rule 3280 regarding the private securities transactions of an associated person. Dual employee arrangements may also be covered by FINRA Member Notice 94-44, which clarifies the applicability of article III, section 40, of the Rules of Fair Practice to investment advisory activities of registered representatives.

Federal and State Insurance Laws and Regulations

Federal and state laws may govern a bank's insurance activities. For a discussion of bank permissible insurance-related activities, refer to the "Insurance Activities" booklet of the *Comptroller's Handbook*. State insurance regulators are the primary regulator of bank insurance activities licensed by the states.

Functional Regulation

Banks may offer RNDIPs through third-party relationships with affiliates and subsidiaries registered with and regulated by the SEC, the U.S. Commodity Futures Trading Commission (CFTC), and state insurance regulators ("functionally regulated affiliates" or "FRA").

An FRA is a bank affiliate, including a bank operating subsidiary, whose primary regulator is the SEC, a state insurance commissioner, or the CFTC. FRAs include

- SEC-registered securities broker-dealers.
- SEC-registered or state-RIAs.
- SEC-registered investment companies (e.g., mutual funds).
- state-supervised insurance companies and agencies.
- CFTC-registered or regulated entities (e.g., futures commission merchants, commodity pools, commodity pool operators, or commodities trading advisers).

As the primary regulator of federally chartered banks, the OCC has the responsibility for evaluating the overall or consolidated risk profile of banks within an organization. This consolidated risk profile is developed by combining the assessment of risks at each affiliated OCC-supervised bank, including an assessment of the material risks posed to the OCC-supervised banks by the banks' or any FRA's functionally regulated activities, as appropriate. For more information on functional regulation. refer to appendix A of the "Bank Supervision Process" booklet of the *Comptroller's Handbook.*

Examiner Risk Assessment

The main goals and objectives of the RNDIP sales program examination are to assess

- risks to the bank and its customers.
- effectiveness of the bank's risk management system.
- the bank's compliance with applicable laws and regulations.
- adequacy of the bank's consumer protection processes.

The risk assessment of this business line reflects both a current (aggregate risk) and prospective (direction of risk) view of a bank's risk profile. Importantly, this risk assessment incorporates the potential material risks to the bank from functionally regulated activities conducted by the bank, its subsidiaries and affiliates, and unaffiliated third parties. A key area of assessment in RNDIP sales program examinations is determining the effectiveness of

a bank's third-party risk management, given the reliance on affiliated and unaffiliated broker-dealers and other functionally regulated entities in offering these products and services.

When reviewing a bank's RNDIP sales program, examiners should determine whether the bank views customers' interests as critical to all aspects of its sales programs. Examiners should evaluate the bank's policies and procedures from a customer perspective and determine whether the bank provides its customers with a high level of consumer protection. This includes evaluating the effectiveness of the bank's policies and procedures for mitigating potential customer confusion regarding the provider of the retail brokerage services and the risks associated with the RNDIPs. In particular, the bank should implement effective actions to affirm whether customers understand that the RNDIP recommended or sold is a securities product, not a bank deposit, and therefore is not covered by FDIC insurance, not guaranteed by the bank, and is subject to investment risks, including the possible loss of the principal amount invested.

When reviewing a bank's RNDIP sales program, examiners should focus on the adequacy and effectiveness of the bank's policies, procedures, and risk management system. This entails a comprehensive evaluation of the sales program management, including assessing the effectiveness of the board, management, governance, policies, procedures, and practices. When assessing a bank's RNDIP risk management program, examiners determine whether appropriate senior bank management has

- participated directly in the planning and ongoing business and risk management decisions related to the RNDIP sales program.
- adopted and implemented a framework to manage risks in a safe and sound manner, and to assess compliance with applicable laws and regulations.
- established effective supervision of bank employees engaged in sales activities.
- implemented effective oversight of the broker-dealer and its registered representatives engaging in RNDIP sales activities, including bank employees who serve as dual employees.

In conducting the review, examiners also focus on the adequacy of the bank's independent risk control functions, such as compliance, risk management, and internal audit. Examiners evaluate the sufficiency of the risk control functions' scope and coverage of the bank's RNDIP sales activities. Examiners assess the adequacy of the surveillance and testing performed by these functions. Examiners also review the risk control functions' findings and bank management's actions that respond to the findings. In addition, examiners should request and review other federal and state regulatory examination reports from the bank, as applicable, subject to functional regulation limitations.[6]

Examiners should evaluate whether bank management implemented timely and sufficient corrective actions in response to concerns with a heightened risk profile or identified deficiencies in the bank's RNDIP sales program and any risk control functions. Banks that do not operate sales programs in a safe and sound manner may be subject to appropriate

[6] Refer to appendix A of the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for more detail on functional regulation.

supervisory action. This includes RNDIP sales programs that may violate laws and regulations or activities that are inconsistent with safe and sound banking practices.

Risk Assessment Scope

This booklet addresses the recommendations or sales of nondeposit investment products to retail customers that fall within the scope of the Interagency Statement. Generally, retail sales include, but are not limited to, recommendations and sales to individuals conducted on bank premises, through the internet or mobile app, or from bank referrals to affiliated or unaffiliated broker-dealers. For more information, refer to the "Scope of Retail Sales" section of this booklet.

In establishing the scope of the RNDIP sales program examination, examiners should understand the range and complexity of a bank's program and the associated regulatory requirements. The bank's RNDIP sales program can include bank direct activities, as well as the use of affiliated or unaffiliated third parties through multiple distribution channels. A bank's strategic decisions drive its RNDIP sales programs' scope, but bank management must also consider the regulatory requirements associated with these bank securities activities.

There are fundamental requirements that all bank RNDIP sales programs must adhere to when engaging in this business, including the GLBA and the antifraud provisions of the federal securities laws, as applicable. The bank's board is ultimately responsible for confirming that the RNDIP sales program is managed consistent with safe and sound banking practices. An overview of these practices is provided in the following section with more details addressed in subsequent sections of this booklet.

Interagency Statement on RNDIPs

Banks' RNDIP sales activities should be performed in a safe and sound manner. Refer to the Interagency Statement and the "Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products" (Joint Interpretations) dated September 22, 1995, issued by the federal banking agencies (OCC Bulletin 1995-52, "Retail Sales of Nondeposit Investment Products: Clarification of Interagency Guidelines"). The Joint Interpretations provide further clarification of the Interagency Statement. The Interagency Statement discusses guidelines for banks' RNDIP sales programs that may help mitigate risks to both banks and consumers. Appendix A of this booklet contains the full text from the Interagency Statement and appendix B contains the full text from the Joint Interpretations.

The Interagency Statement applies only to banks and not to broker-dealers. Instead, broker-dealer firms that are members of FINRA and operate on bank premises must comply with FINRA Rule 3160, "Networking Arrangements Between Members and Financial Institutions." This rule mirrors many of the guidelines discussed in the Interagency Statement and was revised to reflect the GLBA amendments to the Securities Exchange Act regarding third-party brokerage arrangements.

The GLBA codified certain concepts discussed in the Interagency Statement that are intended to avoid customer confusion. In addition to these concepts, the Interagency Statement discusses program management guidelines that addresses RNDIP sales activities conducted directly by the bank and through arrangements with third parties.

GLBA and Regulation R

The GLBA was enacted to enhance competition in the financial services industry by providing a prudential framework for the affiliation of banks, securities firms, insurance companies, and other financial service providers. Title II of the GLBA established requirements that define which bank securities activities are permitted to be conducted within a bank under bank regulator supervision, as compared with the securities activities that need to be "pushed out" to a securities broker or dealer that is subject to SEC supervision.

The Securities Exchange Act generally defines "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." In revising the scope of the term "broker" to eliminate what had been a blanket exemption for banks from broker registration, the GLBA detailed 11 specific broker registration exceptions for banks. Each of these exceptions permits a bank to engage in securities transactions that meet specific statutory conditions. Under these exceptions, banks may engage in certain securities activities in connection with

- third-party brokerage arrangements (commonly referred to as "networking arrangements").
- trust and fiduciary activities.
- permissible securities transactions (e.g., U.S. Treasury and U.S. Agencies obligations).
- certain stock purchase plans.
- sweep accounts.
- affiliate transactions.
- private securities offerings.
- safekeeping and custody activities.
- identified banking products.
- municipal securities.
- a de minimis number of other securities transactions.

In 2006, the Financial Services Regulatory Relief Act of 2006 (FSRRA) was enacted. Among other things, the FSRRA requires that the SEC and the FRB jointly adopt a single set of rules to implement the GLBA's bank broker exceptions. In addition, section 401 of the FSRRA gave FSAs parity with banks with regard to the Securities Exchange Act and the Advisers Act. In September 2007, the SEC and the FRB jointly adopted a single set of final rules (Regulation R) that implement certain GLBA exceptions for banks from broker registration. These rules, developed in consultation with the other banking agencies, apply to all banks.

Regulation R defines the terms used in several of the GLBA's statutory exceptions and includes certain related exemptions. These "carve-outs," which cover securities activities a

bank is authorized to conduct without having to register as a securities broker or dealer, are called "exceptions" under the GLBA and "exemptions" under Regulation R. Regulation R implements the statutory exceptions that allow a bank, subject to certain conditions, to continue to conduct securities transactions for its customers as part of the bank's trust and fiduciary, custodial, and deposit sweep functions, and to refer customers to a securities broker-dealer pursuant to a networking arrangement with a broker-dealer. Regulation R also includes certain exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity by a bank that does not have custody of the securities being borrowed or lent, and the execution of transactions involving mutual fund shares and variable annuities.

In general, if more than one broker exception or exemption is available to a bank under the GLBA or Regulation R for a securities transaction, the bank may choose the exception or exemption on which the bank relies to effect the transaction. Importantly, these exceptions and exemptions from broker registration apply only to the bank. They are not available to a nonbank entity, such as a nonbank subsidiary or affiliate. Additionally, the GLBA requires banks to maintain records sufficient to demonstrate compliance with the terms of the GLBA exceptions and that the records be designed to facilitate compliance with such exceptions. For more information, refer to the "Asset Management" booklet of the *Comptroller's Handbook*.

The GLBA broker exception most relevant to a bank's RNDIP sales programs is the third-party brokerage networking arrangement. This exception authorizes a bank to enter into a formal agreement with an affiliated or unaffiliated registered securities broker-dealer under which the broker-dealer offers brokerage services on or off the bank's premises. The networking arrangement exception codifies certain guidelines discussed in the Interagency Statement. These GLBA requirements mainly address mitigating the risk of customer confusion by requiring actions that distinguish the broker-dealer as the provider of the brokerage services and not the bank. Unlike the Interagency Statement's focus on retail customers, the GLBA's networking exception does not distinguish between retail and nonretail customers.

The GLBA establishes nine conditions to the third-party brokerage networking arrangement exception. Regulation R provides further interpretation of one of the conditions regarding a banker's receipt of incentive compensation and referral fees associated with a bank's networking arrangement. Regulation R requirements are discussed later in the compensation section and in appendix C of this booklet.

Third-party brokerage arrangements. The GLBA provides an exception from broker registration when a bank enters into a contractual or other written arrangement with an affiliated or unaffiliated registered broker-dealer under which the broker-dealer offers brokerage services on or off the bank's premises. Such arrangements must satisfy the following conditions:[7]

[7] Refer to Exchange Act Section 3(a)(4)(B)(i) [15 USC 78c(a)(4)(B)(i)].

- The broker-dealer must be clearly identified as the person performing the brokerage services.
- The brokerage services must occur in a clearly marked area that is, to the extent practical, physically separate from the routine deposit-taking activities of the bank.
- Any materials used by the bank to advertise or promote the availability of brokerage services under the arrangement must clearly indicate that the brokerage services are provided by the broker-dealer and not the bank.
- Any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement must comply with federal securities laws before distribution.
- Bank employees can perform only clerical or ministerial functions in connection with brokerage transactions, including scheduling appointments with the associated persons of a broker-dealer, except that bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available from the bank and the broker-dealer under the arrangement.
- Bank employees may not receive incentive compensation for any brokerage transaction, except they may receive compensation for a referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount, and the payment of the fee is not contingent on whether the referral results in a transaction.
- Broker-dealer services must be provided on a basis in which all customers who receive any services are fully disclosed to the broker-dealer.
- The bank may not carry a securities account of the customer except as permitted under the GLBA exceptions for trust, and safekeeping and custody activities.
- The bank or broker-dealer must inform each customer that the brokerage services are provided by the broker-dealer and not the bank, and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the FDIC.

Bank employees who are also associated persons of a broker-dealer and are qualified pursuant to the rules of a self-regulatory organization are not subject to the GLBA conditions that restrict incentive compensation and referral fees and limit the employees' activities to performing clerical or administrative functions. Additionally, neither the networking exception nor other GLBA requirements restrict the type or amount of compensation that a bank may receive from its broker-dealer partner under the networking arrangement.

Banks may use one or more GLBA broker exceptions when offering an RNDIP sales program. For example, banks could offer a full-service retail brokerage program through a networking arrangement and also engage in securities transactions directly with retail customers by offering cash management sweep accounts, such as sweep accounts that invest deposit funds into an MMMF. A bank may also use the de minimis transaction exception or the custody exception, among other GLBA exceptions, when conducting its RNDIP sales activities. Regardless of which exception or exemption a bank relies on, the bank must comply with all the respective requirements associated with the exception or exemption. For more information, refer to the "Asset Management" booklet of the *Comptroller's Handbook*.

For purposes of conducting an RNDIP sales program examination, examiners should be aware of the GLBA and Regulation R requirements associated with banks engaging in securities transactions through sweep accounts, a de minimis number of transactions, or custody accounts.

Sweep accounts. A bank that sweeps deposit monies into an MMMF is not considered a broker if the bank meets the requirements of the exemption. The bank must effect these transactions as part of a program for the investment or reinvestment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act of 1940 that holds itself out as a MMMF. Regulation R Rule 740 defines "no-load" consistent with the FINRA definition used in a mutual fund prospectus:

- No-load means the MMMF's shares
  - are not subject to a sales load or deferred sales load.
  - do not have total charges against average net assets for sales or sales promotion expenses for personal service or the maintenance of shareholder accounts that exceed 25 basis points.
- No-load does not include charges for the following services provided to investment companies:
  - Providing transfer agent or sub-transfer agent services.
  - Aggregating and processing orders.
  - Providing account statements.
  - Processing dividend payments.
  - Providing sub-accounting services.
  - Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses.
  - Receiving, tabulating, and transmitting proxies executed by beneficial owners.

Regulation R, Rule 741 provides banks a broader-based exemption from broker registration requirements for transactions in SEC-registered MMMFs. This broader-based exemption allows banks to conduct transactions in SEC-registered MMMFs with customers beyond deposit sweep arrangements and in funds that do not meet the no-load definition, provided certain conditions are met. This exemption also permits banks to operate deposit sweep programs that sweep customers' assets into MMMFs that do not meet the definition of no-load, provided certain conditions are met.

Regulation R provides an exemption from broker registration requirements for a bank effecting transactions in MMMFs provided the bank either

- provides the customer with another product or service that does not require the bank to register as a broker-dealer (e.g., an escrow, trust, fiduciary or custody account, deposit, loan, or other extension of credit); or
- effects the transaction on behalf of another bank as part of the other bank's sweep account program; and
  - the MMMF shares are no-load; or

- if the MMMF shares are not no-load, the bank
  - provides the customer with a prospectus before the customer authorizes the transaction; and
  - does not characterize the fund as no-load.

If a bank relies on the exemption to sweep the deposits of another bank into a "load" MMMF, the deposit-holding bank and the sweeping bank may not characterize the fund as a no-load fund. Additionally, either the deposit-taking bank or the sweeping bank must provide the customer with a prospectus for the fund before the customer authorizes the transaction.

If a customer's deposit funds are swept into a no-load MMMF and the bank is authorized under the terms of the sweep agreement to alter the specific fund into which the customer's balances are invested, the bank must provide the customer a prospectus for any MMMF that is not a no-load fund before the date on which the bank first invests the customer's balances in that fund.

De minimis exception. A bank is not considered a broker if the bank does not effect more than 500 securities transactions of any type per calendar year.[8] This exception allows banks to effect a limited amount of transactions in securities that do not qualify for any of the other GLBA exceptions or Regulation R exemptions. The bank may also elect to use this exception even if another exception or exemption is available for the transaction. This exception requires that such transactions are not effected by an employee who is also an employee of a broker-dealer (dual employee). Transactions by these employees are considered to be transactions by the broker-dealer and are not counted as bank transactions.

Custody exception and order-taking exemption. The bank is authorized to provide custody and safekeeping services provided the bank does not take securities orders from its customers and directs trades to a broker-dealer or in some other manner permitted by the SEC. Regulation R (Rule 760) provides an exemption from broker registration for banks that, as part of their customary banking activities, accept orders to effect securities transactions. This provision allows banks to continue to accept securities orders in a custodial capacity and permits bank customers to take advantage of those order-taking services. Banks engaging in securities transactions under this exemption are subject to conditions that are designed to limit the scope of the custodial order-taking activity while providing investor protections.

A bank is authorized to accept orders to effect securities transactions for certain types of accounts for which the bank acts as a custodian if specific Regulation R (Rule 760) conditions are met. The custody accounts must be either

- employee benefit (EB) plans, IRAs, and similar accounts; or
- accommodation trades for other custodial accounts.

[8] Securities Exchange Act Rule 3a5-1 provides banks an exemption from dealer registration for riskless principal transactions by allowing a bank to count its riskless principal transactions and brokerage transactions effected under the de minimis exception toward the same 500-transaction limit. The SEC has provided guidance on how to count transactions for purposes of this dealer exemption that uses the broker de minimis exception.

The order-taking conditions that apply to EB plans, IRAs, and similar accounts mainly include limitations on a bank employee's compensation and the bank's advertisements and require directing trades to broker-dealers. Accommodation trades are subject to the same conditions as EB plans, IRAs, and similar accounts, but also are limited by restrictions on the bank's compensation, sales literature, provision of investment advice, and recommendations.

OCC Expectations

Each bank should conduct a comprehensive analysis of its securities activities to assess compliance with the GLBA and Regulation R, and to demonstrate compliance. A bank's comprehensive plan and implementation of actions to address GLBA and Regulation R requirements should be tailored to be commensurate with the scope and complexity of a bank's securities activities. Ongoing processes should be established by and tailored by each bank to assess effective compliance with the GLBA, Regulation R, and any applicable recordkeeping requirements. Examples of a bank's compliance process could include the following, as applicable:

- Include all affected bank units in the planning and implementation processes, such as the various impacted business lines, human resources, legal, compliance, internal audit, risk management, finance, operations, and marketing.
- Understand the nature of the activities and revenues generated.
- Analyze bank and employee compensation related to securities activities.
- Make decisions on which GLBA exception or Regulation R exemption is to be used for preserving the bank's securities activities.
- Determine whether certain accounts or business lines need to be re-priced, restructured, or pushed out to a broker-dealer given required limitations.
- Review customer disclosures.
- Review advertising policies and procedures.
- Review securities trade order handling.
- Develop business line policies and procedures.
- Make necessary programming changes to affected systems.
- Develop risk control processes that include compliance, risk management, and internal audit functions to provide ongoing monitoring and testing.
- Develop recordkeeping systems to demonstrate compliance.
- Provide bank employee training.
- Incorporate the GLBA and Regulation R requirements in the bank's review and approval processes as appropriate. Such processes may include review of new products and services, marketing materials, customer disclosures, and employee compensation.

Bank managers who do not effectively implement and monitor compliance with the GLBA and Regulation R or maintain records demonstrating compliance with these requirements expose their banks to compliance, ~~reputation,~~ strategic, and operational risks. Noncompliance with these requirements could present potential legal issues that may include enforcement actions being taken by the OCC and the SEC. Additionally, a bank's failure to comply with broker registration requirements or exceptions from broker registration could trigger customer rescission of a contract that potentially could lead to bank indemnification of

customer losses. Section 29(b) of the Securities Exchange Act includes a provision that every contract made in violation of the Securities Exchange Act or of any rule or regulation adopted under the Securities Exchange Act, with certain exceptions, shall be void. Regulation R Rule 780 includes an exemption for banks from liability under section 29 of the Securities Exchange Act that addresses inadvertent Regulation R compliance failures by banks that could otherwise trigger rescission of contracts between a bank and a customer.

Antifraud Provisions

Banks operating RNDIP sales programs should be aware that they remain liable under the antifraud provisions of the federal securities laws and regulations (e.g., section 10(b) of the Securities Exchange Act and Securities Exchange Act Rule 10b-5) even if their securities transaction activities comply with an exception or exemption from broker-dealer registration. These antifraud provisions prohibit materially false and misleading representations in connection with offers and sales of securities. In addition, the bank's RNDIP program should incorporate fundamental fraud risk management controls that the bank implements commensurate with its products and services. Refer to OCC Bulletin 2019-37, "Operational Risk: Fraud Risk Management Principles," for more information.

RNDIP sales activities should be designed to minimize the possibility of customer confusion and to safeguard banks from liability under the antifraud provisions of the federal securities laws and regulations. Consistent with effective risk management, banks should determine whether customers were misled or were provided inaccurate representations about the nature and risks associated with RNDIPs. Sellers could face potential liability under these antifraud provisions for making materially false or misleading statements in connection with offers and sales of securities. Consistent with safe and sound banking practices, bank-related RNDIP sales activities should be operated to avoid customer confusion about the products being offered. Use of affiliated or unaffiliated third parties to sell RNDIPs does not relieve bank management of the responsibility to take reasonable steps to determine that the sales activities meet applicable requirements.

Risks Associated With RNDIP Sales Programs

From a supervisory perspective, risk is the potential that events will have an adverse effect on a bank's current or projected financial condition[9] and resilience.[10] The OCC has defined eight categories of risk for bank supervision purposes: credit, interest rate, liquidity, price, operational, compliance, strategic~~, and reputation~~. These categories are not mutually exclusive. Any product or service may expose a bank to multiple risks. Risks also may be interdependent and may be positively or negatively correlated. Examiners should be aware of and assess this interdependence. Examiners also should be alert to concentrations that can significantly elevate risk. Concentrations can accumulate within and across products, business lines, geographic areas, countries, and legal entities. Refer to the "Bank Supervision

[9] Financial condition includes impacts from diminished capital and liquidity. Capital in this context includes potential impacts from losses, reduced earnings, and market value of equity.

[10] Resilience recognizes the bank's ability to withstand periods of stress.

Process" booklet of the *Comptroller's Handbook* for an expanded discussion of banking risks and their definitions.

Banks that engage in RNDIP sales programs are subject to a variety of risks that if not properly managed can adversely affect these banks' earnings, capital, and franchise value and result in customer harm. Generally, the risks associated with banks' RNDIP sales activities are compliance, operational, strategic~~, and reputation~~ risks. Banks are also exposed to credit risk if their RNDIP sales programs provide margin or securities lending to customers. The following sections address these risks from the perspective of the OCC's risk assessment system.

Compliance Risk

Compliance risk is the risk to current or projected financial condition and resilience arising from violations of laws or regulations, or from nonconformance with prescribed practices, internal bank policies and procedures, or ethical standards. Compliance risk is a substantial factor in banks' RNDIP sales programs, given the complex framework of regulatory requirements that apply to such activities. Banks' RNDIP sales programs must comply with applicable banking, securities, and insurance regulatory requirements. Examiners should determine the adequacy of banks' compliance policies and procedures that provide for bank personnel to properly identify, implement, and test conformance with applicable regulatory requirements. These policies and procedures should provide for effective governance and management of the RNDIP sales program. Ineffective internal controls subject banks to potential customer complaints, litigation, regulatory action~~, and reputation damage~~. The financial consequences of not properly managing the compliance risk associated with an RNDIP sales program can result in settlements with customers, voiding of contracts, monetary fines, civil money penalties, and loss of business.

Banks should pay particular attention to consistency with safe and sound banking practices and compliance with the statutory exceptions from the definition of "broker" established by the GLBA. Refer to the Interagency Statement for examples of safe and sound banking practices. The GLBA separated permitted bank securities activities that a bank conducts under the supervision of its bank regulator from all other bank securities activities that need to be "pushed out" to a broker-dealer subject to SEC supervision. A bank that seeks to take advantage of the permitted bank securities exceptions must determine that it is operating in compliance with the GLBA's statutory exceptions and the FRB and SEC's Regulation R, as applicable, which are discussed in greater detail in the "Examination Scope Setting" section of this booklet.

Even if a bank takes advantage of a permitted bank securities exception, the bank is subject to the antifraud provisions of the federal securities laws (e.g., section 10 of the Securities Exchange Act) and Securities Exchange Act Rule 10b-5. These antifraud provisions prohibit a bank from providing materially misleading or inaccurate representations in connection with offers and sales of securities. The bank should determine that its advertising and marketing materials do not mislead customers about the nature of RNDIPs, particularly their lack of FDIC coverage. The bank should also take reasonable steps to verify that the promotional

materials and sales activities of a broker-dealer (whether affiliated or not) offering securities to bank customers through an arrangement with the bank comply with these antifraud provisions.

Broker-dealers and their registered representatives must also comply with applicable securities laws, as well as FINRA rules, regarding their RNDIP sales program at a bank. The bank should obtain appropriate assurances from its broker-dealer partner that the broker-dealer and its registered representatives are complying with all applicable SEC and FINRA rules and policies. Similarly, banks should require representations from RIAs and insurance agents engaged in an RNDIP sales program that the RIAs and agents comply with all applicable regulatory requirements.

Managing compliance risk associated with a bank's RNDIP sales program should involve implementation of strong compliance policies and procedures. As described in OCC Bulletin 2023-17, a bank using a third party in its sales program should implement an effective, well-documented due diligence process in selecting and monitoring these service providers. Factors that could raise the bank's level of compliance risk in the RNDIP area include

- a culture that does not demonstrate a reasonable commitment to address the multifaceted and complex compliance requirements associated with a bank's RNDIP sales program.
- implementation of an extensive RNDIP sales program that engages multiple third parties, offers a broad array of products and services, or uses various distribution channels.
- use of bank and broker-dealer dual employees.
- ineffective new product and service review and approval processes.
- distribution of proprietary products.
- ineffective bank oversight of the RNDIP sales program.
- violations or nonadherence to regulatory requirements.
- sales practices that are unsuitable or not in the best interest of customers (depending on the applicable regulatory framework).
- significant customer complaints, litigation, and settlements.
- inadequate policies and procedures.
- poorly implemented policies and procedures.
- insufficient surveillance monitoring systems.
- implementation of compensation programs that incent inappropriate practices.
- failure to implement an effective process for reviewing marketing and advertising materials.
- lack of effective training programs.
- weak independent risk control functions, such as compliance, risk management, and internal audit.

Operational Risk

Operational risk is the risk to current or projected financial condition and resilience arising from inadequate or failed internal processes or systems, human errors or misconduct, or adverse external events. Operational risk is inherent in a bank's RNDIP sales program.

Operational risk arises from inadequate bank oversight of RNDIP third parties or bank employees, sales practice misconduct, poor customer service, or adverse internal or external events that could affect transactional business volumes and efficient trade execution. Operational losses associated with a bank's RNDIP sales program typically result from a failure to meet obligations involving customers, products, and business practices; fraud; or from securities transaction-based issues, such as trade errors. For a detailed discussion of operational risk issues in the asset management context, refer to the "Asset Management Operations and Controls" booklet of the *Comptroller's Handbook*.

Effective third-party risk management is particularly important in the RNDIP sales area when a bank relies on both affiliated and unaffiliated broker-dealers and other third parties. This includes implementation of a high-quality due diligence process in selecting and monitoring these third parties for effective operational risk management. For a detailed discussion of third-party risk management principles, refer to OCC Bulletin 2023-17.

A bank's RNDIP ongoing monitoring process should continually assess the third party's performance by requiring the third party to provide the bank with information regarding the third party's sales practices; surveillance results; exception tracking; product and service offerings; customer complaints, fraud, litigation, and settlements; hiring practices; stability of its sales force; regulatory findings; and compliance issues. This information should be tailored to the breadth, complexity, and riskiness of the bank's RNDIP sales program. Access or receipt of this information is typically facilitated through the bank's contract negotiation with the third party. At a minimum, the third party should provide this information to the bank on a quarterly basis to aid the bank in fulfilling its oversight responsibilities. A bank with extensive RNDIP sales programs typically receives monthly reporting from the third party. In addition, sound practices typically include the bank performing ongoing assessments of the third party's financial strength, ~~reputation,~~ and control environment.

Bank RNDIP sales programs may use quantitative models in delivering financial plans, selecting recommended investments, constructing customers' investment portfolios, valuing customer assets, or implementing trading strategies. While models can improve business decisions, they also expose a bank to model risk. If not properly managed, model risk can contribute to ineffective decisions, financial losses, ~~damage to the bank's reputation~~, or customer harm. A bank's use of quantitative models for its RNDIP sales program should be consistent with sound model risk management principles. For a detailed discussion of sound model risk management principles, refer to the "Model Risk Management" booklet of the *Comptroller's Handbook* and OCC Bulletin 2011-12, "Sound Practices for Model Risk Management: Supervisory Guidance on Model Risk Management."

If a bank offers RNDIP services directly, examiners should determine whether the bank's front- and back-office systems support current and new RNDIPs, associated service offerings, and transaction processing. Examiners also should determine whether a bank offering these products maintains a system to provide timely and accurate sales confirmations and periodic account statements to customers. A bank typically has operational systems to determine whether bank customers receive prospectuses and other investment-related information timely. Operational systems typically support accurate fee billing. The bank's

third-party management and new product review processes should assess the capabilities of the third party's front- and back-office systems to handle transactional and reporting requirements.

Examiners should determine whether the bank incorporates appropriate business continuity management into the risk management life cycle of its RNDIP-related systems, processes, and operations. When a bank relies on a third party for aspects of its RNDIP sales program, as part of sound operational risk management, a bank will typically require its third parties to have sufficient business continuity planning in the event their primary servicing sites become unavailable. Likewise, examiners should determine whether the bank has appropriate strategies and resources to support resilience, including requiring its third parties to have adequate operational capacity and customer service, staff, and systems (e.g., internet access) to manage through periods of market stress that can trigger higher levels of trading volumes and customer inquiries.

The bank's system of internal controls should encompass bank direct RNDIP sales activities, dual employee arrangements between the bank and the broker-dealer, and oversight of each third party. Effective internal controls help the bank determine whether bank personnel and brokerage sales representatives are operating within the scope of their authorization, not misrepresenting products to bank customers, not mishandling customers' assets, and not providing fraudulent asset valuations. Manual processes should receive heightened scrutiny given the higher likelihood of control breakdowns. Implementation of necessary dual controls and segregation of duties is particularly critical when handling and valuing customers' assets. Implementing appropriate management hiring practices and compensation programs are key controls to deter internal fraud and to incent proper sales practices. A bank's internal audit function typically performs reviews of the bank's RNDIP sales program to identify and verify correction of weaknesses in risk management or controls.

Factors that could raise a bank's level of operational risk in the RNDIP area include

- failure to conduct appropriate due diligence in selecting or monitoring the broker-dealer or other third parties used in the sales program.
- inadequate management information systems (MIS).
- ineffective model risk management.
- deficient processes and internal controls within front or back-office operations.
- reliance on manual processes.
- ineffective fee billing systems.
- inadequate disaster recovery planning.
- lack of capacity to handle above average customer inquiries or trading levels.
- inappropriate hiring practices.
- high turnover in the RNDIP sales force.
- inadequate controls over customer funds that could result in misappropriation or fraud.
- ineffective internal audit coverage of the bank's RNDIP sales program.

Strategic Risk

Strategic risk is the risk to current or projected financial condition and resilience arising from adverse business decisions, poor implementation of business decisions, or lack of responsiveness to changes in the banking industry and operating environment. Strategic risk can arise from a bank's RNDIP sales program when business planning and implementation do not provide the required resources and risk management to properly manage and control risks associated with RNDIP activities. Banks commonly offer RNDIP sales programs to generate noninterest income and to enhance customer relationships by offering a full array of financial products and services. A bank should devote sufficient resources to carry out its RNDIP sales program strategic initiative. These resources include communication protocols, operating systems, delivery channels, managerial capacities and capabilities, third-party risk management, and product due diligence processes. Bank management should implement effective oversight of both the affiliated and unaffiliated third parties used in the sales program. New product and service proposals should be carefully vetted to assess the appropriateness of such offerings for the bank's customer base. The bank should determine whether proper risk identification and risk management controls are in place before launching new or enhanced RNDIP initiatives through a bank delivery channel.

Strategic risk increases when bank management fails to respond to changes in the banking and retail brokerage industry and broader operating environment. A bank offering customers RNDIP options should devote adequate resources to address the significant regulatory reforms and fundamental strategic changes in the retail brokerage industry, particularly as the business shifts from solely transaction based to an investment-advice-for-a-fee model.

The bank's strategic plan should consider the market sensitivity of the earnings derived from these activities. RNDIP sales programs provide noninterest income that can be an important component of bank profitability and shareholder value. Revenues in this area, however, are highly dependent on transaction volumes and an increase in the market value of customer assets under advice or management. These revenues may be adversely affected when financial markets experience a significant and sustained downturn. These revenues can likewise be offset by financial losses, settlements, or fines resulting from improper sales practices, fraud, or poor customer service.

Starting and maintaining an RNDIP sales program can require a substantial commitment because the oversight process tends to be labor intensive, ensuring compliance with applicable law can be complex, and operating systems could be costly. Many smaller community banks likely engage with third parties for provisioning of an RNDIP sales program. Engaging with third parties typically is less costly than running an in-house program, and the third party can provide its own operating system. The bank's financial success involves a sound strategic planning process approved by the board of directors and executed by senior management. The risk level depends on the compatibility of a bank's strategic goals and the business strategies developed to achieve these goals. Factors that could raise a bank's level of strategic risk in the RNDIP area include

- weaknesses in the risk management structure over the RNDIP sales program.
- failure to properly oversee securities broker-dealers and other third parties.

- ineffective new product and services review and approval processes.
- inadequate ongoing product and service due diligence processes.
- the lack of sufficient scale to operate at a profitable level.
- ineffective strategic planning and implementation.
- unrealistic strategic goals in light of changing market conditions.
- lack of necessary business line resources, independent risk control functions, or technology resources to effectively offer RNDIPs to customers.

Reputation Risk

Reputation risk is the risk to current or projected financial condition and resilience arising from negative public opinion. Reputation risk is inherent and significant in a bank's RNDIP sales delivery channel. Offering RNDIPs exposes the bank to potential reputational damage from inappropriate sales practice, customer misunderstandings of the risks associated with the RNDIP offerings, or poor customer service. Bank management should implement effective controls over these activities to prevent retail customers, as well as the bank's reputation, from harm. For example, a bank's retail customer base may include customers with limited investment experience, conservative risk profiles, or expectations that the products offered are guaranteed by the bank or are FDIC-insured. Additionally, a bank's retail customer base may include senior investors seeking to preserve capital while achieving modest returns. The bank should exercise an abundance of caution in dealing with these and other retail customers whether through direct bank contact or through arrangements with affiliated or unaffiliated third parties. Failure to implement proper controls is considered an unsafe and unsound practice that can result in heightened risk to current or anticipated earnings, capital, or franchise or enterprise value arising from negative public opinion.

Reputation risk may impair banks' competitiveness by affecting their ability to establish new relationships or services or continue servicing existing relationships. Banks' RNDIP sales programs face heavy competition within the financial services industry. Banks must maintain an untarnished reputation to compete effectively in attracting and retaining retail customers. Banks may enhance their reputation in the RNDIP area by contracting with broker-dealers that have state-of-the-art systems, offering RNDIPs appropriate for the banks' delivery channels, providing high-quality customer service, and complying with applicable law.

A bank's RNDIP sales program that actively associates the bank's name with products and services offered through third-party arrangements or affiliates is likely to have higher exposure to reputation risk. Marketing efforts commonly use the sponsoring bank's name or logo in "branding" the RNDIP service to retail customers. A bank's RNDIP offerings may also include investment options that are managed, underwritten, or issued by the bank or its affiliated entities. These products generally contain similar names to the bank or its affiliates. Such products may include mutual funds, ETFs, syndicated offerings, hedge funds, structured CDs, or structured notes. A bank using branding techniques or bank-affiliated products should implement enhanced risk controls given the increased potential for customer confusion and heightened reputation risk.

Factors that could raise a bank's level of reputation risk in the RNDIP area include

- lack of a strong ethical culture and internal control environment.
- violations of applicable law, regulatory enforcement actions, customer litigation, or other negative publicity.
- improper sales patterns or practices reflected by customer complaints.
- failure to properly supervise bank direct RNDIP sales activities.
- failure to properly oversee broker-dealer third parties.
- unsuitable sales practices or practices that do not meet best interest requirements, as applicable.
- sales of inappropriate RNDIPs to customers.
- sales programs that take advantage of seniors or lower-income customers.
- inclusion of higher risk, high commission, or complex product offerings that exceed the bank's risk appetite and are not appropriate for the bank's delivery channel.
- inadequate product due diligence resulting in poor product performance.
- ineffective controls over and inadequate training of the sales force that result in customer confusion about the risks associated with RNDIPs.
- ineffective supervision and training of bank employees engaged in direct bank RNDIP activities or in providing referrals to the broker-dealer third party.
- compensation programs that incent improper practices.
- sales programs that use branding techniques involving the bank's name or logo.
- proprietary product and service offerings that are associated with the bank or its affiliated entities.
- errors in processing and poor customer service.
- inadequate processes to monitor (e.g., a root cause analysis and identification of associated internal control or other risk management issues) and address complaints with bank personnel who have authority to take action.
- failure to remediate customer harm.

Credit Risk

Credit risk is the risk to current or projected financial condition and resilience arising from an obligor's failure to meet the terms of any contract with the bank or otherwise perform as agreed. The majority of banks' RNDIP sales activities involve banks acting in an agency capacity on behalf of retail customers. These programs generally do not entail a bank taking on principal risk through direct holdings of RNDIP positions or by providing extensions of credit to customers. A bank's RNDIP sales program that provides retail customers margin lending or securities lending services may, however, pose credit risk to the bank. A bank may directly or indirectly, through an affiliated or unaffiliated broker-dealer, extend credit to its retail customers to finance their purchases of securities on margin. In limited circumstances, retail brokers may allow their retail customers to borrow securities to finance positions or execute investment strategies. A bank engaged in such lending activities may unintentionally risk the bank's current or anticipated earnings or capital if the bank's retail customer, or a securities lending counterparty, fails to meet the terms of these lending agreements. While these arrangements require that collateral be posted by the borrower of the security in excess of the

potential credit exposure, if a customer or counterparty defaults, the bank's exposure could be as high as the shortfall in collateral coverage.

Credit risk exposure also exists for banks that engage directly in foreign exchange transactions with retail customers. This activity typically involves a bank acting as principal to the transactions and may involve margin lending. Counterparty credit risk management and effective margin lending practices are necessary to mitigate the associated risks.

Credit risk may also arise when funds are extended, committed, invested, or otherwise exposed through actual or implied contractual agreements, whether reflected on or off the bank's balance sheet. RNDIP sales activities may expose a bank to counterparty credit risk when settling trades on behalf of customers, advancing payments to customer accounts (even on an intraday basis), or permitting overdrafts in customer accounts. Exposure to credit risk should be considered when selecting settlement arrangements and evaluating the use of depositories and third-party custodians. Exposure to counterparties through RNDIP sales activities should be considered part of the bank's overall credit risk management program.

Factors that could raise a bank's level of credit risk in the RNDIP area include

- ineffective credit risk management practices.
- deficiencies in margin lending risk management.
- inadequate counterparty credit risk management.
- weaknesses in collateral management risk controls.

Risk Management

Each bank should identify, measure, monitor, and control risk by implementing an effective risk management system appropriate for the size and complexity of its operations. When examiners assess the effectiveness of a bank's risk management system, they consider the bank's policies, processes, personnel, and control systems. All these elements are essential to an effective risk management system. If any of these areas are deficient, the bank's risk management may also be deficient. Refer to the "Corporate and Risk Governance" booklet of the *Comptroller's Handbook* for an expanded discussion of risk management.

Risk management is an important responsibility of a bank engaging in RNDIP sales activities whether these activities are conducted directly by the bank or by affiliated or unaffiliated third parties. A sound risk management system should effectively identify, measure, monitor, and control risk. No single risk management system works for all banks, given the variability of market conditions, bank organizational structures, risk strategies, and RNDIP sales programs. A bank should implement a risk management system commensurate with the associated risk exposures, size, and complexity of its RNDIP sales program. For example, a large bank's risk management systems should be independent from the risk-taking activities and sufficiently comprehensive to enable senior management to identify and effectively manage the risk throughout the company. Each bank should tailor its risk management system to its needs and circumstances. A bank's risk management system should be dynamic in addressing changes to the bank's RNDIP sales program.

Regardless of the risk management system's design, each system should do the following.

Identify risk: A bank's risk identification should be comprehensive and include risks that originate in broker-dealer subsidiaries or affiliates or arise from networking arrangements with unaffiliated broker-dealers. Risk identification should be a continual process that occurs at the transaction, portfolio, and enterprise levels for bank direct RNDIP activity. Likewise, for proper bank oversight of RNDIP sales activity conducted by affiliated or unaffiliated securities broker-dealers, bank management's ongoing risk identification and risk understanding should occur at the line of business level. Bank management should also identify interdependencies and correlations across business lines that may amplify risk exposures.

Measure risk: Banks' measurement tools vary greatly depending on the breadth and complexity of products and services sold through the RNDIP sales program and the scope of the delivery channels. More sophisticated measurement systems are needed as the complexity and risks of the RNDIP sales program increase. Many larger banks use key risk indicators (KRI), which are customized risk metrics used by the business and independent risk management functions to signal and measure risk. Bank management should periodically test the measurement tools to determine their accuracy. Sound risk management tools assess the risks of individual transactions and aggregate customer portfolios, as well as interdependencies, correlations, and aggregate risks across lines of business.

Monitor risk: Bank management should have affiliated and unaffiliated third parties provide sufficient risk monitoring reports so that they can properly oversee RNDIP sales programs. For large, complex companies, monitoring should be sufficient to determine whether management's decisions are implemented across geographic, product, and division lines.

Control risk: Boards should establish banks' strategic direction and approve risk limits. The board and management, in their respective roles, should establish and communicate risk limits through policies, standards, and procedures that define responsibility and authority. These risk limits should serve to control exposure to the various risks associated with RNDIP activities. The limits should be tools that management can adjust when conditions or risk appetites change. Management also should have a process to authorize and document exceptions to risk limits when warranted. Consistent with safe and sound banking practices, banks' boards should adopt and periodically review a written program management statement that addresses the associated risks, policies and procedures, and risk management associated with the sales program. Refer to the Interagency Statement for examples of safe and sound risk management practices.

Adoption of Program Management Statement and Policies and Procedures

Program Management

A bank's board is ultimately responsible for the bank's provision of an RNDIP sales program regardless of whether this business is conducted directly by the bank, by affiliated or

unaffiliated third parties under a networking arrangement with the bank, or by some combination of these entities. Examiners should determine whether bank management has implemented effective program management over the RNDIP sales activities as adopted by the board. Unless the bank can demonstrate it has an effective oversight program in place, the OCC will criticize a bank that relies on or delegates program management responsibilities to an affiliated or unaffiliated broker-dealer. The board establishes the risk appetite and strategic direction for a bank's RNDIP sales program. This includes finding the strategic fit for the RNDIP sales program within the bank's retail distribution channel and considering the bank's other asset management-related business lines. Increasing competition and the dynamic nature of the financial services industry demand effective strategic planning and monitoring.

The board is responsible for providing the necessary managerial, financial, technological, and organizational resources to achieve the bank's strategic goals and objectives. This includes responsibility for the selection and retention of an experienced and competent management team responsible for supervising bank direct RNDIP sales activities and for overseeing the third parties used in the sales programs. The board may assign authority for the management of the RNDIP sales program to bank officers, specific directors, employees, or committees. Whomever has been delegated authority by the board should keep the board adequately informed about risk identification and risk management in the bank's RNDIP sales program and be responsible for the implementation, integrity, and maintenance of the risk management system.

In carrying out its oversight responsibilities, a larger bank's board commonly designates a bank RNDIP oversight committee charged with risk identification, risk monitoring, and decision-making within the board's established risk appetite. These RNDIP oversight committees should implement formalized governance,[11] including, as appropriate, a charter; membership; identification of voting members and members with veto power; quorums; frequency of meetings; and the maintenance of well-documented minutes to record decisions. A senior bank manager responsible for the bank's RNDIP sales program typically leads the oversight committee. This committee should establish the necessary management information required to carry out its oversight responsibilities.

The Interagency Statement provides that "a depository institution…should adopt a written statement that addresses the risks associated with the sales program and contains a summary of policies and procedures outlining the features of the institution's program and addressing, at a minimum, the concerns described in this Statement. The written statement should address the scope of activities of any third party involved, as well as the procedures for monitoring compliance by third parties…The scope and level of detail of the statement should appropriately reflect the level of the institution's involvement in the sale or recommendation of nondeposit investment products."

[11] Refer to 12 CFR 30, "Safety and Soundness Standards, Appendix D OCC Guidelines Establishing Heightened Standards for Certain Large Insured National Banks, Insured Federal Savings Associations, and Insured Federal Branches."

The Interagency Statement notes that "The institution's policies and procedures should include the following

- procedures for ensuring compliance with applicable laws and regulations and consistency with the provision of this Statement.
- designation by senior managers of specific individuals to exercise supervisory responsibility for each activity outlined in the institution's policies and procedures.
- criteria governing the selection and review of each type of product sold or recommended.
- procedures for the use of information regarding the institution's customers for any purpose in connection with the RNDIPs.
- description of the responsibilities of those personnel authorized to sell nondeposit investment products and of other personnel who may have contact with retail customers concerning the sales program, and a description of any appropriate and inappropriate referral activities and the training requirements and compensation arrangements for each class of personnel."

For more information, refer to the Interagency Statement.

The Interagency Statement states that, "The institution's statement should be adopted and reviewed periodically by its board of directors." Examiners should evaluate whether the written statement is reviewed and reaffirmed by the board or a board-designated committee at least annually or more frequently if warranted.

Examiners should review the bank's RNDIP sales activities to determine whether the bank has adopted an effective written statement that addresses the risks, policies, procedures, and risk management associated with the sales program. An essential component of effective program management is to determine whether the bank complies with the multiple regulatory requirements, including the GLBA and Regulation R specific requirements on banks' securities activities and act consistent with safe and sound banking practices. Refer to the Interagency Statement and Corporate and Risk Governance booklet of the *Comptroller's Handbook*.

Policies and Procedures

The board should establish policies for RNDIP activities tailored to the risks and complexities of the bank's program. Management should implement processes consistent with the policies and safe and sound banking practices. These may include the following:

- Compliance policies and procedures.
- Supervision of personnel involved in sales.
- Designation of employees to sell investment products.
- Types of products sold.
- Permissible use of customer information.

For more information, refer to the Interagency Statement.

Additionally, if the bank or its third party uses models in the RNDIP sales program, the bank should adopt policies and procedures that address sound model risk management.

Examiners evaluate whether the bank tailors its policies and procedures to the scope of its RNDIP sales program. The level of detail contained in the bank's policies and procedures should be commensurate with the risks, structure, and complexity of the bank's RNDIP sales program.

Compliance Policies and Procedures

Compliance policies and procedures should be comprehensive to assess conformance with applicable laws and regulations and consistency with safe and sound banking practices. Bank management should accurately develop and implement effective procedures designed to help ensure the bank complies with multiple legal and regulatory requirements associated with the bank's RNDIP sales program. The bank should undertake this review process frequently to reflect ongoing regulatory changes and modifications to the sales program.

The bank's policies and procedures should be consistent with safe and sound banking practices (refer to the Interagency Statement for examples), as well as the relevant GLBA exceptions and Regulation R exemptions. These may include the following:

- **Third-party risk management:** Address the roles of other entities selling on bank premises, mobile app, or website including supervision of selling employees. Bank management should oversee and monitor the third party's compliance with the written agreement on an ongoing basis. The degree of bank management's involvement should be dictated by the nature and extent of the RNDIP sales program, the effectiveness of consumer protection systems, and customer complaints. For more information, refer to the "Third-Party Relationship Risk Management" section of this booklet.
- **Qualification and training requirements:** Establish standards for bank personnel and their supervisors authorized to recommend or sell RNDIPs to assess the adequacy of knowledge and understanding of the applicable requirements. Banks also typically establish minimum requirements for third parties to determine whether third parties' sales representatives are properly authorized, qualified, trained, and supervised.
- **Compensation arrangements:** Establish programs to incentivize proper practices and to assess compliance with the GLBA, Regulation R, and other applicable regulatory requirements, as well as consistency with safe and sound banking practices regarding payments to bankers for referrals to broker-dealers or as part of the bankers' bonus plan associated with the RNDIP sales program.
- **Suitability, best interest, and sales practices:** Institute bank requirements covering both the bank and RNDIP third parties to determine RNDIP recommendations and sales are suitable for or in the best interest of customers (depending on the applicable regulatory framework) and sales practices are appropriate.
- **Customer disclosures and advertising:** Establish standards in compliance with the GLBA, antifraud provisions, and other applicable requirements, and consistent with safe and sound banking practices as discussed in the Interagency Statement.

- **Setting and circumstances:** Address the GLBA standards for distinguishing RNDIP sales activities from the bank's deposit-taking business and consistent with safe and sound banking practices as discussed in the Interagency Statement.

Supervision of personnel involved in the RNDIP sales programs: Senior bank managers should assign bank personnel to, and hold them accountable for, each activity outlined in the bank's policies and procedures. Examiners should determine whether managers of the bank's securities sales activities understand the investment products offered and the sales process, as well as assure compliance with applicable securities and banking laws, rules, and regulations. Senior bank management typically require by contract that affiliated and unaffiliated broker-dealers provide effective supervision of the sales representatives associated with the broker-dealer.

Dual employee arrangements that involve an individual acting as a bank employee and a broker-dealer employee require heightened supervision of such employee's total activities. This is particularly essential when a dual employee is engaged in securities transactions for both bank fiduciary customers and broker-dealer customers. The bank typically develops a supervisory oversight system that holistically reviews the work of these dual employees to determine whether their actions are creating advantages or disadvantages for bank fiduciary or brokerage customers. This overarching risk management system generally requires coordination with third parties to obtain necessary information. This risk management system should include effective governance, policies, procedures, manager accountability, surveillance, appropriate metrics, escalation for exceptions, review of compensation systems, training, compliance monitoring, testing, and internal audit program coverage.

To determine whether bank or broker-dealer customers are being disadvantaged, the risk management system should review dual employee transactions for potential issues with trade allocations, front running, use of insider information, cross-trading, churning, dumping, unsuitable trades, transactions not in a customer's best interest, conflicts, self-dealing, misrepresentations, excessive fees/commissions, or instances of anti-tying activities. Securities regulators have similar interests in reviewing dual employees' securities-related activities. FINRA Rule 3280 addresses a broker-dealer's registered representatives engaging in private securities transactions or "selling away" activities. These transactions (which include securities transactions with bank customers) involve a registered representative engaging in securities transactions for compensation that occur away from the brokerage firm.

Designation of employees authorized to sell RNDIPs: Examiners should determine whether a bank's program management statement specifies that only properly trained and supervised employees are permitted to make investment sales or recommendations. The statement typically describes the responsibilities of personnel authorized to sell or recommend RNDIPs and those authorized to assess whether the requirements under the relevant GLBA exceptions and Regulation R exemptions are met. Examiners should determine whether the bank establishes standards for other bank personnel who may have contact with retail customers. Bank policies and procedures typically include a description of

appropriate and inappropriate referral activities, training requirements, and compensation arrangements for each category of personnel.

Types of products sold: Policies and related procedures typically include the criteria that the bank uses to select and review each type of product offered or recommended to customers, either directly or indirectly (e.g., through a third-party relationship). For each type of product that bank employees offer, examiners should determine whether the bank identifies specific laws, regulations, regulatory conditions, and any other limitation or requirements, including qualitative considerations that expressly govern the selection and marketing of products the bank offers. The bank's policies and procedures also typically address the selection criteria and ongoing due diligence processes implemented by affiliated or unaffiliated broker-dealers. For more information, refer to the "Product Selection" section of this booklet.

Use and sharing of consumer information: A bank that offers RNDIPs to consumers must comply with the GLBA's privacy provisions (12 CFR 1016, "Privacy of Consumer Financial Information (Regulation P)") and applicable sections of the Fair Credit Reporting Act (FCRA) (12 CFR 1022, "Fair Credit Reporting (Regulation V)"). In particular, a bank must comply with the FCRA's affiliate sharing[12] and affiliate marketing provisions.[13] The GLBA privacy rule generally requires a bank to notify consumers about its privacy policies and to provide consumers with an opportunity to opt out of certain information sharing between the bank and certain third parties. The GLBA privacy notices must disclose specified information, including the types of information shared, the purposes for which the information is shared, and who the information is shared with (e.g., affiliate, service provider). These privacy notices incorporate disclosures required by both the GLBA privacy rules and the FCRA.

The GLBA privacy rules, however, include several exceptions to the requirement that consumers be given an opportunity to opt out of the disclosure of nonpublic personal information to a nonaffiliated third party. One exception under 12 CFR 1016.13(c) is for joint marketing agreements, which are commonly used in banks' RNDIP sales programs that engage an unaffiliated broker-dealer. Among other things, under 12 CFR 1016.13 banks must provide consumers with a notice in accordance with 12 CFR 1016.4 and by contract prohibit the third party from disclosing or using the information for purposes other than those for which the information was disclosed to the third party. Another exception permits a bank that has obtained a consumer's express consent to disclose nonpublic personal information, to share information without providing the consumer an initial notice (as otherwise required under 12 CFR 1016.4(a)(2)). Another relevant exception is when a bank discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction requested or authorized by the consumer.

The *sharing* of certain consumer information with affiliates is subject to other restrictions under the FCRA. In general, reports limited to transactions or experiences between the

[12] See section 603(d) of the FCRA for the definition of the term "consumer report" and section 603(d)(2) for exclusions from the definition of "consumer report."

[13] See subpart C of 12 CFR 1022, "Fair Credit Reporting (Regulation V)."

consumer and the entity making the report are excluded from the definition of a "consumer report" and may be shared with affiliates. In addition, subject to 15 USC 1681, section 624 of the FCRA, other consumer information may be shared with an affiliate if the sharing bank has clearly and conspicuously disclosed to the consumer that the information may be shared and the consumer is given the opportunity, before the information is initially shared, to direct that it not be shared.[14] For general information on opt out notices, see the model forms in the appendixes to 12 CFR 1016 and 12 CFR 1022.

The *use* of consumer information obtained from an affiliate (including transaction and experience information) to make a solicitation for marketing purposes is subject to further restrictions under section 624 of the FCRA. Before using such information, the receiving affiliate must clearly and conspicuously disclose to the consumer that the information may be used to make solicitations to the consumer and provide the consumer with a reasonable opportunity to opt out of receiving such solicitations. There are exceptions to the notice and opt out requirement, however, such as preexisting business relationships or consumer-initiated communications. For more information, refer to the "Privacy of Consumer Financial Information" and "Fair Credit Reporting" booklets of the *Comptroller's Handbook*.[15]

Model Risk Management

Banks or their third parties may use models when offering RNDIPs to customers. These models may be used in selecting investments, recommending asset allocations, offering financial planning, or providing margin and securities lending services. OCC Bulletin 2011-12 describes the key aspects of effective model risk management. This guidance defines a model as "a quantitative method, system, or approach that applies statistical, economic, financial, or mathematical theories, techniques, and assumptions to process input data into quantitative estimates." Bank management is responsible for confirming the bank maintains sound model risk management for models used in an RNDIP sales program. Examiners should refer to the examination procedures in the "Model Risk Management" booklet of the *Comptroller's Handbook* and OCC Bulletin 2011-12 for examples of safe and sound model risk management principles. These principles include, for example, model governance, policies, controls, development, implementation, use, and validation.

Third-Party Relationship Risk Management

Banks commonly use third parties, such as securities broker-dealers, insurance agents, and RIAs, when providing RNDIPs through bank distribution channels. These third parties may be bank affiliates, which include bank operating and financial subsidiaries, bank holding company nonbank subsidiaries (such as broker-dealers and RIAs), or unaffiliated third parties. A bank's board should approve the initial choice of the broker-dealer and the written agreement, also known as the networking agreement, between the bank and broker-dealer. The board, as part of its oversight responsibilities, typically confirms that effective risk

[14] See section 603(d)(2)(A) of FCRA.

[15] Also, refer to the Office of Thrift Supervision (OTS) *Examination Handbook*, section 1300, FCRA.

assessment and due diligence processes are implemented by senior management to properly oversee the third parties engaged in the bank's RNDIP sales program.

Risk Assessment

Before entering into an arrangement with a third party, the bank's board and management typically conduct a comprehensive risk assessment that generally identifies

- the role of the relationship, given the bank's overall strategic plans and objectives, and considers whether the third party's activities are clearly integrated with the bank's strategic goals.
- risks associated with the third party's activity.
- appropriate performance criteria, internal controls, reporting needs, and contractual requirements.
- expertise needed to properly oversee and manage the activity.
- costs and benefits of such arrangements.
- anticipated customer expectations and understandings regarding the bank's use of a third party.

Banks should manage the risks of these third-party relationships to determine whether the third parties' activities are conducted in a safe and sound manner and in compliance with applicable laws and regulations. When a bank hires a third party for its RNDIP sales program, the bank's board of directors typically adopts a written program management statement addressing the scope of the third-party activities within the RNDIP sales program and third-party risk management procedures the bank intends to use to oversee the broker-dealer. At a minimum, these procedures should be consistent with safe and sound risk management. Refer to the Interagency Statement and OCC Bulletin 2023-17 for examples of safe and sound third-party risk management practices

Due Diligence Process

A bank should implement an effective risk-based due diligence process when selecting and overseeing a broker-dealer and its activities for the bank's RNDIP sales program. This process is typically documented to demonstrate the bank's oversight program. A bank's due diligence process covering the broker-dealer typically assesses the

- financial strength of the broker-dealer and its significant related organizations.
- quality and experience of the broker-dealer's management and sales representatives.
- ~~reputation of the broker-dealer as determined by contacting other banks with which the broker-dealer has done business, and by researching public sources.~~
- complaints, litigation, settlements, and disciplinary history of the brokerage firm and its registered representatives.
- compliance with the written agreement between the bank and the broker-dealer once selected.

- examination history and background of the broker-dealer and its registered representatives through FINRA's BrokerCheck and the SEC's Investment Adviser Public Disclosure search when registered representatives are dual employee with an RIA.
- broker-dealer's product offerings and selection process.
- internal controls environment and audit coverage.
- adequacy of MIS provided to the bank for overseeing the sales program.
- capacity of the broker-dealer to handle unusual surges in redemptions, increased customer inquiries, emergency staffing, and problems with operational systems.
- business resumption, continuity, recovery, contingency plans, and technology recovery testing efforts.
- responsiveness of the broker-dealer to the bank's requests.
- performance of the broker-dealer in meeting the bank's strategic objectives, risk appetite, terms of the agreement, and customer expectations.
- financial strength, quality of services, ~~reputation,~~ and performance of any additional service providers used by the broker-dealer in providing the RNDIP sales program.

Banks commonly contract directly with broker-dealers that are "introducing brokers" who in turn have arrangements with affiliated or unaffiliated broker-dealers for executing transactions and carrying customers' brokerage accounts. Introducing brokers effect securities transactions by accepting customer orders and transmitting those orders to an executing broker that in turn places the trade, produces customer confirmations and account statements, maintains customer records, and typically carries the customer brokerage accounts. The clearing broker-dealer serves as the back-office function for the introducing broker by providing safekeeping and custody of customer accounts, margin credit, and securities lending services.

A growing trend in the brokerage industry involves the "dual hatting" of registered representatives as RIA employees. These sales representatives provide investment advisory services to retail customers in tandem with brokerage services. A bank's arrangement for the provision of RNDIP sales activities may also engage insurance agents for the offering of fixed rate annuities and investment-oriented life insurance products. A bank's initial selection and ongoing due diligence processes should comprehensively cover all the affiliated and unaffiliated third parties engaged in the RNDIP sales program.

Written Agreement With the Broker-Dealer

The bank that relies on the exclusion from the definition of broker in Section 3(a)(4)(B)(i) of the Securities Exchange Act must enter into a contractual or other written agreement with the broker-dealer and any other third parties used in the sales programs for provision of RNDIPs and related services.[16] At a minimum, the written agreement must satisfy the requirements in the GLBA networking exception and be consistent with safe and sound banking practices. Refer to the Interagency Statement and OCC Bulletin 2023-17 for examples of safe and sound banking practices. Agreements with a broker-dealer or any other third party used in an RNDIP program may, for example

[16] Exchange Act Section 3(a)(4)(B)(i) [15 USC 78c(a)(4)(B)(i)]

- clearly identify the broker-dealer as the entity performing the brokerage service.
- require third-party compliance with the GLBA's networking agreement exception regarding marketing materials, customer disclosures, and sales location conditions.
- describe the duties and responsibilities of each party.
- describe the permissible activities of the broker-dealer and its registered representatives on bank premises.
- contain terms as to the use of the bank's space, personnel, and equipment.
- specify the costs and compensation terms between the broker-dealer and the bank.
- state compensation arrangements for personnel of the bank and for registered representatives of the broker-dealer.
- specify that the broker-dealer complies with all applicable laws and regulations and consistently acts in a way that would not cause the bank to fall outside safe and sound banking practices, particularly with regard to customer disclosures. Refer to the Interagency Statement.
- authorize the bank to monitor the broker-dealer and periodically review and verify that the broker-dealer and its registered representatives are complying with the agreement.
- authorize the bank as well as the OCC to have access to the records and specific MIS needed for bank oversight of the broker-dealer as necessary or appropriate to evaluate compliance.
- require the broker-dealer to indemnify the bank for potential liability resulting from actions of the broker-dealer with regard to the RNDIP sales program.
- provide for written employment contracts, satisfactory to the bank, for personnel that are dual employees of both the bank and the broker-dealer.
- state which RNDIPs or services registered representatives are permitted to sell to bank customers and any restrictions on sales methods targeting particular groups of bank customers.
- require the broker-dealer to inform the bank about revisions to the broker-dealer's product selection and ongoing due diligence process and additions to the recommended product offerings prior to implementing such changes.
- provide for restrictions on the use of customer financial information.
- require the broker-dealer to implement an effective Bank Secrecy Act and anti-money laundering (BSA/AML) program.
- establish performance measures or benchmarks that define the expectations and responsibilities for the bank and the broker-dealer.
- identify the type, scope, and frequency of information, including customer complaints, that the broker-dealer is to furnish bank management to fulfill the bank's third-party oversight responsibilities.
- set forth the training that the bank expects its employees and broker-dealer personnel to possess and obtain on an ongoing basis.
- provide for business resumption and contingency plans addressing operational and service continuity.
- require the broker-dealer to maintain adequate insurance with a requirement that the broker-dealer must notify the bank of material changes to its coverage.
- address dispute resolution, limits on liabilities, default, and termination of agreement.

Reports to Monitor the Broker-Dealer

To fulfill its oversight responsibilities, bank management typically requires the broker-dealer to provide various reports and provide access to the broker-dealer's RNDIP sales program records. These reports vary with the scope and complexity of the sales program and should be tailored so that the bank may properly oversee the RNDIP activities. Examples of periodic reports that assist bank management in fulfilling its oversight responsibilities include

- sales reports by product, region, and sales representative during a specified reporting period, and associated trend analysis.
- identification of significant or unusual sales activities.
- sales promotions.
- compensation programs for sales representatives and their supervisors.
- product and service compensation payouts.
- disclosures regarding the fees and costs related to services and investments that retail customers pay or incur directly or indirectly.
- disclosures related to the monitoring of retail customers' accounts pursuant to account monitoring agreements.
- disclosures on material limitations on accounts or services recommended to retail customers.
- account openings and closings by type, region, and sales representative during a specified reporting period, and associated trend analysis.
- product and service additions and terminations.
- revisions to the broker-dealer's product selection and ongoing due diligence process.
- listing, trend analysis, and resolution of customer complaints, litigation, and settlements.
- summaries of surveillance efforts that include identification of issues, policy exceptions, and the broker-dealer's actions to resolve these issues and exceptions.
- broker-dealer sales force turnover, new hires, voluntary exits, and terminations.
- reasons for sales force terminations.
- hiring practices and any changes to those practices.
- policies and procedures required by Regulation Best Interest.
- regulatory reports and findings that relate to the sales program.
- compliance reviews, targets, and findings.
- results from branch inspections.
- mystery shopping and call-back program findings.
- training provided to sales representatives and to bankers.
- internal audit coverage and findings.
- revenues and costs associated with the program.

Bank management should require the broker-dealer to provide notification of business disruptions, cyberattacks, fraud discoveries, breaches of customer privacy, and other significant events as stipulated by the bank and in conformance with regulatory requirements.

Examiners should determine whether the bank assesses if broker-dealers, as well as their registered representatives, are particularly cautious regarding

- recommendations or sales of RNDIPs to seniors.
- marketing and advertisements aimed at seniors.

Banks typically use transaction reports, testing arrangements, and customer account reviews to determine that registered representatives consider customers' age, life stage, and liquidity needs in determining whether RNDIP sales are in a retail customer's best interest. As investors age, their investment time horizons, goals, risk tolerances, and tax status may change. Liquidity often takes on added importance. Seniors and retirees, depending on their particular circumstances, may have less tolerance for certain types of risk than other investors.

Restrictions on Transactions With Affiliates—12 USC 371c and 12 USC 371c-1

Banks engaged in RNDIP sales programs that involve networking arrangements with bank affiliates must assess compliance with the affiliate transaction legal requirements. Banks are subject to certain quantitative and qualitative restrictions on transactions with affiliates as prescribed by sections 23A and 23B of the Federal Reserve Act, 12 USC 371c and 12 USC 371c-1, and 12 CFR 223, the FRB's "Transactions Between Member Banks and Their Affiliates, (Regulation W)." These legal restrictions apply to transactions between a bank (or its subsidiaries) and affiliates conducting RNDIP sales activities. These restrictions also apply to transactions between the bank and its own financial subsidiary. For a detailed discussion of the specific restrictions imposed on affiliate transactions, refer to the "Related Organizations" booklet of the *Comptroller's Handbook*.

A bank's networking arrangements with an affiliated broker-dealer are the most common affiliate transactions associated with an RNDIP sales program. Banks should determine whether the terms and conditions of this arrangement are formalized, on an arms-length basis, and consistent with the fair market value of a similar agreement with an unaffiliated entity. Banks should monitor compliance with this requirement and document such compliance.

Compliance Program

If a bank engages in RNDIP sales activities, examiners should determine whether the bank has developed and implemented processes to provide reasonable assurance that activities are conducted in compliance with applicable laws and regulations and the bank's internal policies and procedures. Refer to the Interagency Statement. Compliance procedures typically identify potential conflicts of interest and how such conflicts should be addressed. Examiners should assess whether conflicts of interests have been properly identified and complete testing, as applicable, to determine adherence to these policies and procedures. Examiners should determine whether the bank has a system to monitor customer complaints and their resolution. When applicable, compliance procedures also typically require

verification that each third party's sales activities are conducted consistent with the written agreement entered into between the bank and the broker-dealer or other third parties.

Depending on the size and complexity of the bank's RNDIP sales program, responsibility for independent compliance monitoring may be delegated to a separate bank compliance function or to the bank's internal auditors. For example, a community bank with a modest RNDIP sales program may engage its internal auditors (or contract with external auditors) to perform compliance reviews and testing. A community bank typically requires the broker-dealer to provide summary information from its compliance function regarding surveillance and functional regulators' findings to incorporate into their bank compliance program.

In contrast, larger and more complex sales programs typically have comprehensive, independent risk control functions. With larger or more complex sales programs, compliance, risk management, and internal audit are each responsible for assessing, testing, and monitoring these programs. Many of these risk control functions are implemented enterprise-wide compared with being a function within a functionally regulated entity, which provides the bank and examiners with full access to RNDIP information. Regardless of the infrastructure, examiners evaluate whether the bank's compliance function is effective with respect to the sales program. Examiners should review engagement letters or other correspondence, compliance work programs (including identification of file samples used), management's response to any identified concerns, and a list of outstanding compliance or audit issues.

Regardless of whether the RNDIP compliance program is performed by a compliance function or internal audit, it should be effective and independent from the RNDIP sales and branch management activities. The compliance function should be adequately staffed with experienced and qualified individuals who receive ongoing training sufficient to effectively carry out their responsibilities. The compliance program and findings should be well documented. The compliance function is more likely to be independent if it

- determines the scope, frequency, and depth of compliance reviews.
- reports findings directly to the bank's board of directors, or to a designated committee of the board.
- has compliance personnel's performance evaluated by persons independent of the RNDIP sales function.
- pays compliance personnel compensation that is not connected to the success of RNDIP sales.

The bank's compliance function should identify all applicable legal, regulatory, and bank internal policy and procedure requirements. This function should have processes in place to stay current on changes to these various requirements. The compliance function plays a vital role in communicating applicable legal and regulatory requirements and determining whether policies and procedures reflect current standards and are consistent with regulatory requirements and safe and sound banking practices. The compliance function may also provide compliance-related training to the business line and to other risk control functions. A broker-dealer's compliance function should also have a team dedicated to ensuring sales

representatives and their supervisors comply with all applicable registration and licensing standards and meet their continuing education requirements.

The compliance function should verify that the RNDIP sales program complies with all applicable laws, regulations, policies, and procedures and the networking agreements. Verification typically includes periodic testing of customer transactions and accounts to detect and prevent abusive practices. The risk profile of the RNDIP sales program should dictate the extent and frequency of customer account reviews. If compliance testing identifies potential suitability or Regulation Best Interest issues in its sample, the bank should require compliance to conduct a full or targeted review of customer accounts to determine the extent of the issue and institute corrective actions. If it is determined that customers may have been disadvantaged, corrective actions should be implemented with documented explanations; and when appropriate, trades should be rescinded, or restitution should be made.

Compliance functions commonly use automated surveillance and exception alert reporting systems to flag potential sales program issues. Such systems monitor product sales and the performance of salespersons. Compliance typically establishes the parameters of the surveillance and alert systems that are applied to the sales activities, and these systems may be customized to specific products. For example, an alert may be triggered when an annuity contract is surrendered during the penalty period and is subsequently replaced with another annuity. The surveillance systems may not only identify isolated instances of annuity replacement activity, but also can be built to identify patterns of similar transactions conducted by a sales representative or sales region or program-wide that should be investigated.

Examiners should review the surveillance system and alerts to identify issues. Examiners should assess a bank's actions in requiring the third party to address potential suitability or Regulation Best Interest concerns. Examiners should determine whether appropriate steps were implemented to resolve identified issues. This may include contacting the customer, improving procedures, rescinding the trade, removing the product from the platform, enhancing supervision, improving training of the identified sales representatives, or terminating a broker. Examiners should assess the adequacy and robustness of the overall compliance surveillance program. Key areas to consider include the adequacy of the scope, identification, remediation, and communication of root causes to senior management.

FINRA requires broker-dealers to conduct periodic branch inspections that involve on-site reviews of that sales location's sales representatives, sales practices, settings, advertising, and books and records. Banks typically conduct similar on-site reviews of their retail branches where RNDIPs are sold. Such bank reviews should include evaluation of the GLBA and Regulation R's requirements relevant to bank employees. Refer also to the discussion on this topic in the Interagency Statement. Examiners should determine whether branch inspection programs are comprehensive and conducted by a sufficiently staffed team of experienced and qualified individuals. Examiners should determine whether findings from the FINRA and bank branch inspections are well documented, reported on a timely basis to the banker or oversight committee responsible for the RNDIP sales program, and analyzed for potential patterns or practices that warrant attention.

Customer Complaints

Customer complaints are a lagging indicator of potential problems that warrant prompt attention. Unresolved complaints can escalate into litigation, potential settlements, losses, and harm to customers. A bank offering RNDIPs typically assigns a bank officer who is independent of the sales force the responsibility to review and approve the resolution of customer complaints received by the bank and to review the third party's complaint resolution system. In larger banks, an independent compliance function or legal division is typically responsible for complaint and dispute resolution.

Examiners should determine whether incoming customer complaints (both written and oral) are appropriately monitored. FINRA requires broker-dealers to categorize and report complaints that are related to sales practices and customer service-related issues. The bank typically requires the networking broker-dealer to provide comprehensive complaint information that includes full descriptions of the complaint, dates, sales representative, customer profile, product involved, service issue, dollar impact, and actions taken to resolve. Additionally, the bank typically requires the broker-dealer to provide detailed information regarding litigation and settlements with customers of the bank's RNDIP sales program.

Banks using other third parties, such as insurance agents and RIAs, typically require comparable detailed reporting and analysis of the complaints, litigation, and settlements that relate to the bank's RNDIP sales program.

Individual customer complaints, litigation, and settlements should not be reviewed in isolation. Analysis of such information should

- focus on patterns and trends to pick up signals on more systemic sales practice concerns and operational issues.
- identify potential sales practice issues associated with certain products, regional sales markets, individual brokers, unsuitable activities or activities that are not in the best interest of retail customers, training issues, promotional programs, and improper conduct.
- detect operational issues that result in poor customer service, trade errors, and disruptions in service.
- quantify potential payouts associated with pending litigation and actual settlements.
- determine the root causes of the identified issues and assess whether these matters are properly addressed to avoid future issues and harm to customers.
- decide whether the broker-dealer's resolution of issues is being handled properly.

Examiners should consider customer complaints, litigation, and settlements when assessing the risks in a bank's RNDIP sales programs, the effectiveness of the bank's risk management systems, and the adequacy of consumer protection.

Mystery Shopping and Call-Back Programs

One of the most effective mechanisms bank management can implement to assure itself that the securities salespersons are providing required disclosures and making suitable

recommendations or recommendations that are in the best interest of retail customers is to "test" the sales program. Either the bank or the RNDIP third party can use its compliance system to implement mystery shopping and customer call-back programs to test RNDIP sales activities. Mystery shopping typically entails the bank or its third party contracting with an independent firm to deploy individuals who pose as prospective customers. These mystery shoppers test the statements and disclosures provided by the RNDIP sales representatives and evaluate the bank setting for compliance with customer disclosure and other consumer protection requirements. While the bank or its third party establish the actual parameters for any mystery shopping, banks are encouraged to include mystery shopping of unlicensed bank employees to verify those individuals are not providing investment advice or otherwise exceeding their authority. Examiners should determine whether mystery shopping results are reported to the bank and any issues identified through this testing process are properly addressed.

A bank can also implement a call-back program that verifies that customers understand their purchase or sales transactions. Typically, a bank officer who is independent of the RNDIP sales program telephones or e-mails a customer a few days after the customer opens a brokerage account or engages in a securities transaction. The bank officer asks the customer questions to determine whether the customer understands that the purchased investment is not FDIC-insured, that it is not a deposit or other obligation of the bank, and that it is subject to investment risk, including possible loss of the principal amount invested. The bank officer also determines if the customer understands the bank's and the broker-dealer's respective roles in the transaction and attempts to confirm customer responses to a previously provided suitability or best interest inquiry. The bank officer may also ask about customer service and usually solicits suggestions for improvement. Based on the customer's responses, the bank employee should elevate any potential sales practice or customer service concerns to compliance or a designated function independent from the business line. Bank call-back programs typically maintain a record of these conversations with customers. Examiners should determine whether bank compliance, or the designated independent function, analyzes and identifies customer call-back results, and bank management properly resolves any issues.

Other Applicable Legal and Regulatory Requirements

A bank's policies, procedures, and compliance functions need to address all relevant legal and regulatory requirements that may apply to the bank's RNDIP sales activities that are conducted through the bank, FRAs, or unaffiliated third parties. In addition to covering the legal and regulatory requirements noted previously, a bank's compliance program should address the following legal and regulatory requirements.

Insurance Consumer Protections—12 CFR 14

Banks must comply with the OCC's insurance consumer protection rules, which implement GLBA section 305. Bank insurance consumer protections are set forth at 12 CFR 14. These regulations apply to retail sales practices, solicitations, advertising, or offers of any insurance or annuity product by a national bank or FSA or any person engaged in such activities at an

office of one of those institutions, or on behalf of the institution. For a more detailed discussion of these requirements, refer to appendix E of this booklet.

Federal Prohibitions on Tying—12 USC 1464(q), 12 USC 1467a(n), 12 USC 1971, 12 USC 1972, 12 CFR 163.36, and 12 CFR 225.7

Banks engaged in offering an RNDIP sales program should assess compliance with the anti-tying statute and regulations. Banks are generally prohibited from tying the availability of credit from the bank to the purchase of securities, insurance, or annuities offered by the bank or a bank affiliate. This prohibition applies whether the customer is retail or institutional. For example, a prohibited tying arrangement relative to a bank's RNDIP sales programs would be that the bank conditions an extension of credit on the customer purchasing securities using a broker-dealer affiliate. The tying standards are complex, and some types of tying are permissible while others are prohibited. For additional information regarding both permissible and impermissible tying arrangements for national banks, refer to OCC Bulletin 1995-20, "Tying Restrictions: Guidance on Tying," or contact the OCC's Bank Advisory group in the Chief Counsel's Office. The concepts contained in this additional information are broadly applicable to FSAs.

Bank Secrecy Act/Anti-Money Laundering—12 CFR 21

A bank engaged in offering RNDIPs should determine whether its BSA/AML and Office of Foreign Assets Control (OFAC) compliance programs appropriately address its RNDIP sales activities. The manner in which the RNDIP relationship is structured and the methods used in offering these products substantially affect the bank's BSA/AML and OFAC risks and responsibilities. Banks conducting RNDIP activity directly are responsible for BSA/AML and OFAC compliance. Most banks, however, enter into a networking arrangement with affiliated or unaffiliated securities broker-dealers to offer RNDIPs on bank premises. The broker-dealer is responsible for BSA/AML and OFAC compliance associated with these retail brokerage activities, and the bank's due diligence process should determine whether the broker-dealer has effective BSA/AML and OFAC compliance programs. Different types of networking agreements may include co-branded products and dual employee arrangements, which raise the complexity of BSA/AML and OFAC compliance. Banks should fully understand each party's contractual responsibilities and determine whether adequate controls are implemented. For more information on BSA/AML and OFAC compliance programs as they relate to RNDIP sales programs, refer to the Federal Financial Institutions Examination Council's *FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual*.

Offers and Sales of Securities at an Office of an FSA—12 CFR 163.76

Under 12 CFR 163.76, FSAs are prohibited from offering or selling debt or equity securities issued by the FSA or its affiliate at an office of the FSA. This prohibition applies to an FSA's offers or sales made directly by the FSA or through a networking arrangement. This regulation provides a limited exception for an FSA to offer and sell its own equity securities or those of an affiliate in connection with the FSA's conversion from a mutual to a stock

form. The FSA must have OCC approval for the conversion and must meet all the conditions listed in the regulation.

As discussed in OTS Thrift Bulletin 23a "Sale of Securities," the OCC does not consider the sales prohibitions in 12 CFR 163.76 applicable to the following transactions, provided that the permitted offers and sales are conducted in a safe and sound manner:

- Initial offerings of stock of an FSA that is held by a mutual holding company, as these offerings are treated the same as mutual to stock conversions under the rule.
- Matching buy and sell orders to facilitate transactions of thinly traded FSA stock in the FSA's offices. For these purposes, stock is considered to be thinly traded when trades are so infrequent that the stock does not qualify to be traded on any recognized exchange or automated quotation network. These transactions are not considered "offers" or "sales" for purposes of the rule, provided the FSA does not solicit customers to purchase the stock.
- Shares of an SEC-registered investment company sponsored, advised, distributed, or administered by an FSA, its holding company, or a subsidiary of the holding company.

Sales of securities by de novo (newly chartered) FSAs raises many of the same safety and soundness concerns addressed in 12 CFR 163.76. Thus, when these securities sales are proposed to be conducted on the premises of a newly chartered FSA, even though the FSA may not yet be authorized to offer insured accounts, the sale should be conducted in accordance with the standards set forth in 12 CFR 163.76.

It is an unsafe and unsound practice if the FSA fails to institute safeguards to prevent misleading statements by institution personnel to customers regarding the nature of proposed securities investments or fails to adopt procedures to identify customers for which stock of the FSA (or an affiliate) would not be an appropriate investment. Examples of safeguards may include the following:

- Establish a training program for employees selling the securities.
- Establish minimum qualifications for retail sellers. For any sales made by non-FSA employees, the FSA should obtain written assurances from the broker-dealer involved that sales in FSA offices are made only by registered representatives of broker-dealers subject to supervision under the federal securities laws.
- Adopt procedures to assure that
  - sellers do not supplement written offering materials with information that misstates material facts or uses deceptively optimistic forecasts, and do not make unsuitable recommendations for purchase or recommendations that are not in the best interest of retail customers, depending on the applicable regulatory standard.
  - purchasers are informed as to the nature of the securities.
  - based on reasonable inquiry, the investment is suitable or in the best interest of retail customers with respect to their current income or investment needs.
- Provide sufficient supervision to prevent overly aggressive and persistent selling efforts.

- Designate an officer to be responsible for coordinating and supervising the FSA's compliance with its established safeguards, including monitoring or testing seller transactions.
- For any transaction taking place in offices of the FSA, determine whether customers sign the acknowledgment form required by 12 CFR 163.76 regarding their understanding that the security they are purchasing is not an insured account.

Although national banks are not subject to the same prohibition regarding the sale of their own or their affiliates' securities at a bank office, the safeguards mentioned previously are prudent measures to implement for proper consumer protection.

Accuracy of the Consolidated Reports of Condition and Income—12 USC 161 and 12 USC 1464(v)

Banks are required to accurately report results from RNDIP sales activities on Schedule RI in the noninterest income sections that address (1) fees and commissions from securities brokerage and (2) fees and commissions from annuity sales. In addition, banks with $1 billion or more in total assets are required to report income from the sale and servicing of mutual funds and annuities in domestic offices on Schedule RI, Memorandum. Banks engaged in RNDIP sales activities at foreign offices are required to report income derived from such activities on Schedule RI-D. Finally, Schedule RC-M items request information related to a bank's sales of private label and proprietary mutual funds and annuities.

Securities Transaction Reporting—12 CFR 12 and 12 CFR 151

Regulations 12 CFR 12 and 12 CFR 151 include minimum recordkeeping, record-retention, and confirmation requirements for securities transactions effected by national banks and FSAs, respectively, for customers. These requirements apply to bank direct RNDIP transactions. The regulations define the specific information that must be recorded and retained for each securities transaction effected by the bank. The regulations also define specific information about securities transactions that must be provided to customers within designated time frames. There are alternative notification procedures and time frames based on the type of customer relationship and the terms of the customer agreement. A bank engaged in bank direct RNDIP activity needs to assess compliance with these recordkeeping, record-retention, and transaction confirmation requirements. Securities transactions effected by an affiliated or unaffiliated broker-dealer engaged by the bank under a networking agreement are subject to analogous SEC and FINRA recordkeeping, record-retention, and transaction confirmation requirements.

Independent Risk Management Program

Many larger banks establish risk management functions that are independent of the business line, which provide an effective challenge for ensuring the RNDIP sales programs are integrated into the bank's overall risk management program and operate within the banks' risk appetite, provide effective investor protections, and control risks. The risk management function is responsible for identifying the risks associated with RNDIP sales programs and

for developing risk metrics for monitoring RNDIP activities. Risk identification commonly starts with the business line conducting a formal risk control self-assessment that the independent risk management function reviews for accuracy. Risk management functions develop and monitor KRIs tailored to the identified risks in the bank's RNDIP sales program. Examples of RNDIP sale program KRIs include

- sales force gross turnover rates.
- new sales force hire rates.
- sales force voluntary exits and termination rates.
- sales practice complaint trends.
- customer service complaint trends.
- anticipated payouts on customer complaints and litigation trends.
- actual settlement trends.
- customer contact rates.
- new products on-boarded over a specified time period.
- products terminated over a specified time period.
- sales by product (assets and commissions).
- complex products relative to traditional products.
- proprietary product sales relative to total sales.
- sales trends indicating early redemptions or exchanges of RNDIPs.
- sales patterns identifying the extent of 401(k) rollovers into IRAs.
- sales of investment advisory services to brokerage customers.
- the number of solicited investment sales not on the bank's approved list of RNDIPs.
- exception rates relating to mandatory internal training for bankers, the sales force, and supervisors.
- customer accounts with stale investment profiles (percentage and trends).
- operational related trade errors (volume and trends).
- suitability or best interest-related trade corrections (volume and trends).
- operational losses.
- margin lending losses.
- regulatory deficiencies identified.
- internal audit deficiencies identified.

Risk management functions within banks with large, complex RNDIP sales programs should actively engage in the new product approval processes and have veto power over products that they determine not appropriate for the sales program. Some banks have developed product risk rating systems that assess the riskiness of the product and determine which customer investment profiles the product is appropriate for. These product risk ratings are assigned when the product is added to the RNDIP platform and are revised on an ongoing basis. Such risk ratings systems can be effective in identifying mismatches in meeting a customer's investment objectives and needs with a certain product.

Internal Audit Program

A bank's internal audit program should provide audit coverage of the bank's RNDIP sales program. The frequency and scope of internal audit's review should be commensurate with the risks, complexity, and breadth of the bank's RNDIP sales activities. This coverage should verify that the sales program is operating in compliance with the bank's strategic objectives, applicable regulatory requirements, and policies and procedures. These audits should also assess the quality of internal controls, MIS, and governance practices. For additional detail regarding OCC expectations in terms of bank audits, refer to the "Internal and External Audits" booklet of the *Comptroller's Handbook*.

The bank's compliance, risk management, and internal audit functions should determine which groups are responsible for testing various aspects of the RNDIP sales program. Internal audit's preliminary findings should be communicated to RNDIP business line managers to obtain their responses and commitments with reasonable time frames for appropriate corrective action, if applicable. Internal audit's final conclusions should be formally reported to independent executive management and the board's audit committee. Management should implement an effective process for escalating significant issues and following up on management's corrective action to the board's audit committee. Internal auditors of the RNDIP program should not receive compensation connected to the success of the bank's RNDIP sales.

Product Selection

A bank typically establishes the criteria governing the selection and ongoing review of RNDIPs sold or recommended through the bank's sales program. Examiners should determine whether the bank carefully considers its customer base when determining which products and services to offer. Sound practices typically include products and services that meet customers' investment needs, are easily understood, and are appropriate for the bank's distribution channel. The bank may select specific RNDIPs itself using the bank's own product due diligence process or, more commonly, the bank may rely on the broker-dealer's processes while staying engaged in the decision-making process. The bank may rely on the broker-dealer's product selection and ongoing monitoring processes, provided the bank carefully reviews these processes and maintains veto power over product selection decisions. The board or bank management typically reviews the broker-dealer's approved RNDIPs to determine these offerings meet the board's risk appetite and are appropriate for the bank's customers. The board should require the broker-dealer to provide information on proposed product additions for the bank's review and approval before recommending these products through the bank's RNDIP sales program. The bank may determine such proposed product additions are not acceptable and therefore not authorized for the bank's RNDIP sales program.

The bank should adopt appropriate policies and procedures that state the criteria the bank uses (or that the third party implements) to select and review each type of investment product sold or recommended through the bank's RNDIP sales program. Acceptable due diligence processes should implement a well-documented, disciplined product selection, retention,

termination, and monitoring process that applies consistent criteria to all RNDIPs, investment advisers, and annuity providers used in the RNDIP sales program. The board and bank management should require the broker-dealer to inform the bank about revisions to the broker-dealer's product selection and ongoing due diligence processes. Before implementing these process revisions, the board or bank management should review such changes to determine whether the changes are acceptable.

Selection and ongoing review of RNDIPs sold and recommended through the bank's sales program should be consistent with sound risk management processes. Refer to OCC Bulletin 2017-43, "New, Modified, or Expanded Bank Products and Services: Risk Management Principles." An effective risk management process typically includes

- performing adequate due diligence before introducing the product.
- developing and implementing controls and processes to assess whether risks are properly measured, monitored, and controlled.
- developing and implementing appropriate performance monitoring and review systems.

This guidance describes the unique risks involved when a bank obtains new, expanded, or modified products and services through a third party.

A bank's third parties should be included in its third-party risk management process, consistent with safe and sound risk management principles. Refer to OCC Bulletin 2023-17. Although most third parties are reputable, their products may be unproven, or the risks associated with the product or service may conflict with bank safety and soundness standards or compliance requirements. In addition, the third party's services may not be appropriate for the bank's unique market, personnel, customers, or operating environment. These risks can be exacerbated by so-called "turnkey" arrangements that are designed to provide the bank with only minimal involvement in the administration and oversight of the product or service. Examiners should determine whether bank management understands the risks associated with RNDIP sales activities and manages the risks throughout the relationship lifecycle. The bank's risk management should include conducting adequate due diligence of each third party, including assessing the proposed third party's ~~reputation,~~ products, and financial condition. Management should not overly rely on the third party's assertions, representations, or warranties, but should do its own analysis to determine the third party and its products are a good fit not only for the bank, but more importantly, for the bank's customers.

The bank's oversight process typically includes product selection criteria, ongoing RNDIP monitoring, and provisions that the broker-dealer provide ample information to facilitate this oversight responsibility. A bank should periodically investigate the broker-dealer's product selection process to assess whether it continues to be appropriate for the bank's customers, particularly those customers with little or no understanding of RNDIPs.

Bank implementation of formalized product-related committees is more common at banks with larger RNDIP programs. These committees typically obtain participation from various related business lines, including bankers, brokers, insurance agents, legal, marketing, operations, and human resources. Risk control functions, including compliance and risk

management, may also participate and hold veto power over committee decisions. The internal audit function may attend the meetings to stay informed but is not typically provided voting authority. This committee structure may include a new product review committee that is responsible for reviewing and approving new and novel RNDIP products. A separate product review committee may be charged with ongoing due diligence over the RNDIP platform to assess performance, usage, identified issues, and decisions about maintenance or termination of products. Consistent with the bank's overall committee structure, these RNDIP committees typically have established charters, membership, voting authority, quorums, agendas, reporting requirements, and well-documented minutes that capture decision-making.

Most banks limit the number of investment products offered on their RNDIP platforms to avoid overwhelming customers with options and to provide sales representatives with adequate training and knowledge on the product set. A basic RNDIP sales program usually offers a variety of mutual funds, fixed and variable rate annuities, ETFs, equities, and fixed income securities (taxable and nontaxable). Larger programs offer a wide array of RNDIPs beyond the minimum product mix to include more complex products. These programs may include alternative mutual funds, hedge funds, REITs, private real estate, private equity, structured products, and derivatives, such as put and call options.

A bank's RNDIP product due diligence processes typically consider the following factors:

- Performance over various time frames.
- Performance relative to a benchmark or absolute measure.
- Volatility of returns and prices.
- Performance and risk attribution analysis.
- Portfolio turnover.
- Concentrated positions.
- Style analysis, including evaluating any style drift.
- Liquidity of holdings.
- Redemption rights and restrictions.
- Fees and expenses.
- Tax efficiency.
- Financial strength of the product provider and guarantor.
- Investment management firm, portfolio manager, and team stability, tenure, experience, continuity, ~~reputation,~~ and responsiveness.
- Operational controls.
- Conflicts of interest.
- Product complexity.
- Product usage.
- Targeted customer base for products.
- Identification of customer profiles for whom a product is not suitable or in the best interest of a retail customer, depending on the applicable regulatory framework.

For a more complete discussion of issues associated with investment options and risks, refer to the "Investment Management Services" booklet of the *Comptroller's Handbook*.

Examiners should review and assess the effectiveness of the bank's

- policies and procedures for selecting, retaining, and terminating products on the RNDIP sales platform.
- new product selection process implemented by the bank or the third party.
- ongoing product due diligence process used by the bank or the third party.
- RNDIP platform in meeting the bank's customers' needs and expectations.
- ongoing oversight and adherence to the approved list of RNDIP products.

Examiners should also assess the independence and thoroughness of the bank's due diligence analysis and the degree to which the bank relies on rating services. Examiners should closely scrutinize a product selection process that favors proprietary products, RNDIPs with large sales fees, or blind acceptance of third-party platforms. The bank should perform an independent analysis of the RNDIP platform in terms of meeting the bank's strategic objectives, risk appetite, and customers' needs. If the product has unusual fees or incentive payments to either the bank or the broker-dealer, the bank should require the broker-dealer to demonstrate why this product is appropriate for the bank's customers. Examiners should evaluate the overall scope and riskiness of the product offerings used in the bank's distribution channel.

Setting and Circumstances

Banks should offer RNDIPs in a manner that does not mislead or confuse customers as to the nature of these investment products or their risks. The setting and circumstances surrounding the sale of RNDIPs is fundamental to ensuring that customers can readily distinguish between RNDIPs and FDIC-insured deposit products. In addition to the GLBA networking exception, the Interagency Statement discusses safe and sound banking practices that address appropriate sales settings and circumstances. These requirements and practices, along with the disclosure requirements, are designed to minimize customer confusion. A bank's RNDIP sales program should

- clearly identify the broker-dealer as the person performing the brokerage services.
- occur in a clearly marked area that is, to the extent practical, physically separate from the routine deposit-taking activities of the bank.
- limit bank employees to performing only clerical or ministerial functions in connection with brokerage transactions.

Examiners should determine whether registered sales representatives clearly identify themselves by the use of nametags, separate business cards, and other similar methods. Banks should use signs, separate desks, distinct offices, walls, planters, or other means to distinguish an RNDIP sales area from the retail deposit-taking area of the bank. In traditional bank branch settings, the RNDIP sales area (including marketing literature) should be located away from the teller line. In limited situations where it is not physically possible to conduct

RNDIP sales in a distinct area of the bank, the bank should take heightened steps to minimize customer confusion. If space and personnel limitations appear to increase the potential for customer confusion, banks typically implement additional training and disclosures, and consider including only RNDIPs with product names that are clearly distinct from the bank's name. As discussed in greater detail in the "Disclosures and Advertising" section of this booklet, similar considerations apply to a bank's website or app that offers both banking products and RNDIPs.

Bank employees, such as tellers, may perform only clerical or ministerial functions, such as scheduling appointments with registered representatives, forwarding customer funds or securities, or describing in general terms the types of investment vehicles available from the bank's RNDIP sales program. Bank employees who are not authorized to sell RNDIPs should never make general or specific investment recommendations regarding RNDIPs or accept orders for such products, even if the RNDIP order is unsolicited (solely directed by the customer). Tellers and other bank employees may only refer customers to registered representatives.

Banks that use dual employees authorized to market both banking and brokerage products and services should take additional actions to distinguish these employees' multiple capacities. Such actions may include separate business cards per capacity, physically changing sales locations depending on the product or service offered, and requiring that signage be displayed or removed depending on the banking or brokerage activity. For example, if the dual employee is recommending RNDIPs, the FDIC desk signage must be removed and replaced with an SIPC notification.

A bank's RNDIP sales program may involve various bank settings and delivery platforms. The bank should tailor the setting and circumstances of its sales programs to provide customers with the necessary level of protection. The bank should consider how the various elements of its RNDIP sales program interact to avoid the potential for misleading statements and to prevent misunderstandings or customer confusion. Banks typically implement effective training programs for bank employees to clearly identify the "dos and don'ts" of employees' activities related to the RNDIP sales program. Follow-up testing by the bank, through its compliance function or internal audit department, or use of mystery shoppers, should verify that the bank's settings and circumstances comply with the GLBA networking exception and are consistent with safe and sound banking practices. For more information, refer to the Interagency Statement.

Product Names

A bank should not offer an RNDIP with a name that is identical to the bank's name. The bank may, however, offer an RNDIP with a name similar to the bank's name. In these situations, the potential for customer confusion as to whether the investment product is FDIC-insured or is guaranteed by the bank is significantly increased. The greater the similarity between the bank and the RNDIP name, the more steps the bank should take to reduce customer confusion. Such steps may include enhanced disclosures, increased employee training, and other similar measures.

Due to the potential for customer confusion, the SEC issued a memorandum in 1993, stating that "common or shared names" between a bank and a mutual fund sold or marketed by or through that bank are presumed to be misleading and a violation of the Investment Company Act of 1940.[17] The SEC goes on to state, however, that a mutual fund can rebut the presumption that a fund's name is misleading by ensuring that the cover page of its prospectus prominently discloses that the fund's shares are not deposits or obligations of the bank and are not federally insured.

Examiners should criticize bank sales programs in which RNDIP names are so similar to the bank's that even mitigating circumstances are unlikely to eliminate customer confusion. For example, it may be acceptable for "First National Bank" to offer an RNDIP named "First Fund" as long as the bank has implemented sufficient disclosures, training, and other measures to mitigate customer confusion. Other names, however, such as "First Bank Fund" or "First National Fund" are so similar to the bank's name that they are inappropriate because they are inherently confusing. The potential for customer confusion can also exist when banking products and RNDIPs with similar names are offered at the same time. This could occur when a dual-hatted employee simultaneously offers a customer the bank's money market deposit account and a proprietary MMMF that contains a name similar to the bank's.

Disclosures and Advertising

Overview of Applicable Legal Requirements

RNDIP recommendations and sales through the bank distribution channel should occur in a manner that assesses whether these products are clearly differentiated from FDIC-insured products. A fundamental way to determine whether retail customers understand these differences is by providing conspicuous and meaningful disclosures that alert a customer about the nature and risks inherent in investing in RNDIPs. The GLBA networking exception contains specific disclosure and advertising requirements and practices that banks must satisfy, and the Interagency Statement discusses related safe and sound banking practices. Additionally, banks must comply with an FDIC regulation, 12 CFR 328, "Advertisement of Membership False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo," which imposes restrictions on a bank's use of the term "member of FDIC" as well as descriptions of FDIC insurance coverage in advertisements related to RNDIPs.

Banks should also be mindful that they are subject to the antifraud provisions of the federal securities laws (e.g., section 10(b) of the Securities Exchange Act and Securities Exchange Act Rule 10b-5). These antifraud provisions prohibit banks from providing materially misleading or inaccurate representations in connection with offers and sales of securities. If a bank misleads its customers about the nature of RNDIPs, including RNDIPs' uninsured status, the bank could face potential liability under the Securities Exchange Act.

[17] SEC Memorandum, May 6, 1993, to SEC Chairman Richard C. Breeden from Barbara Green, Deputy Director, and Thomas S. Harman, Associate Director (Division of Investment Management). The text from the memorandum is included in appendix D of this booklet.

FSAs are also subject to a regulatory restriction imposed by 12 CFR 163.27, "Advertising." This FSA regulation restricts any kind of advertising or representation that is inaccurate or in any way misrepresents the FSA's services, contracts, investments, or financial condition. This section defines advertising as including print or broadcast media, displays and signs, stationery, and all other promotional materials.

Disclosure and Marketing—Material Risk Management

Bank management typically establishes an internal review system to assess whether all bank-related customer forms, advertisements, and marketing materials related to the bank's RNDIP sales program comply with applicable law, are accurate, are not misleading, and include all required disclosures. This review process should include risk control functions, such as compliance or the legal division, that are independent from the business line and the marketing department. The scope of this review typically includes customer-based information covering all communication media, from paper to electronic. Drafts of materials that will be distributed to customers should be reviewed for conformance before issuance.

A bank typically establishes inventory controls that identify currently approved customer and promotional materials and the items that should be removed or replaced. An effective inventory control system should be implemented to determine materials with inaccurate, incomplete, or outdated disclosures are not made available to customers. Independent testing should be performed to determine the effectiveness of the bank's disclosures, advertising, and inventory processes, particularly at the branch level.

Minimum Disclosures

The GLBA requires that banks relying on an GLBA exemption or the broker-dealer inform each customer that the brokerage services are provided by the broker-dealer and not by the bank, and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the FDIC.[18] Disclosures with respect to the sale or recommendation of RNDIPs typically specify that the product is

- not insured by the FDIC.
- not a deposit or other obligation of, or guaranteed by, the bank.
- subject to investment risks, including possible loss of the principal amount invested.

In addition to the GLBA requirement, the Interagency Statement contains general guidelines for preparing these disclosures.

GLBA provisions require that any materials used by the bank to advertise or promote the availability of brokerage services under an arrangement between the bank and a securities broker-dealer must

[18] 15 USC 78c(a)(4)(B)(i)(IX)

- clearly indicate that the brokerage services are provided by the broker-dealer and not the bank.
- comply with federal securities laws before distribution.

Conspicuous and Accurate Disclosures

The FDIC's regulations require clear and conspicuous disclosures that products being offered are not FDIC insured.[19] Generally, all disclosures are featured conspicuously in all written and oral sales presentations, advertising and promotional materials, and customer account opening documents (refer to the discussion in the Interagency Statement). Additionally, these disclosures should be conspicuously displayed in customer materials, such as trade confirmations and periodic statements that include the name or the logo of the bank or an affiliated entity. Disclosures are conspicuous when they are

- in a font size at least as large as the document's predominant text.
- enhanced by boxing, bolding, or bulleting text.
- presented on the cover or at the beginning of the relevant portion of the document.

This conspicuous standard applies to all forms that contain the minimum disclosures regardless of media. For example, documents provided online to a customer should meet the same criteria as paper materials. Disclosures on the back of documents or in smaller type than the predominant text of the material are not conspicuous and should be revised so retail customers can easily read them. Banks are strongly encouraged to make the key disclosures in type that is larger and bolder than the predominant type in the document to draw customers' attention to this important information.

All RNDIP sales program-related advertising and marketing materials, written or otherwise, should conspicuously include the minimum disclosures and should not suggest or convey any inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance. Any advertising or promotional materials used by the bank should clearly identify the broker-dealer as the provider of the retail brokerage products and services and should not suggest that the bank is the provider.

Banks commonly use marketing materials, such as brochures and signs, that contain information regarding both FDIC-insured deposits and RNDIPs. These materials should clearly segregate information regarding RNDIPs from the information regarding deposits. The minimum disclosures should be conspicuously displayed on the cover of the marketing materials or at the beginning of the RNDIP presentation.

Enhanced procedures are essential to assess whether accurate disclosures are provided for particular products with unique aspects. For example, banks' RNDIP sales programs may offer certain investment products that qualify as deposits covered by FDIC insurance. Such products include structured CDs and deposit sweep accounts. In addition to the GLBA

[19] 12 CFR 328.102(a)(3)(i).

disclosures for these deposit products, banks also must comply with Truth in Savings Act of 1991 and FDIC insurance-related disclosure requirements.

- Structured CDs are covered by FDIC insurance up to the current depositor coverage limits in the event the bank that issued the CD fails. The FDIC insurance coverage, however, does not extend to the potential returns on the CD that are not realized. Importantly, FDIC insurance does not cover the possible principal lost when a customer redeems or liquidates the structured CD before maturity. Bank management should determine whether the FDIC insurance disclosure on structured CDs accurately reflects these nuances, along with the other risks associated with these products.
- Deposit sweep accounts are hybrid products that combine elements of FDIC-insured deposits and RNDIPs. Deposit sweep accounts typically employ daily, pre-arranged, automatic funds transfers from a non-interest-bearing deposit account to an RNDIP. Common sweep investment options are MMMFs, Eurodollar deposits, commercial paper, repurchase agreements, bankers' acceptances, and master notes. FDIC regulation 12 CFR 328.3(e), "Advertisement of Membership, Official Advertising Statement Requirements," prohibits an insured bank from using its FDIC membership statement or any other statement or symbol that implies or suggests the existence of FDIC insurance, in any advertisement relating solely to hybrid products. Also, under 12 CFR 360.8(e), "Resolution and Receivership Rules, Method for Determining Deposit and Other Liability Account Balances at a Failed Insured Depository Institution," the FDIC requires banks to prominently disclose in writing to sweep account customers whether the swept funds are deposits and the status of the swept funds if the institution fails. These disclosures must be provided when a sweep account is opened or renewed and annually thereafter. Bank management should provide customers with accurate disclosures that discuss the specific limitations on FDIC insurance coverage for these products.

If advertisements, sales, and promotional materials include any written or oral representations concerning SIPC insurance, then the bank should provide customers with clear and accurate explanations of SIPC insurance to minimize possible confusion with FDIC insurance. Any references to SIPC insurance should not suggest or imply that it is the same as or similar to FDIC insurance.

Shortened Disclosures

The Joint Interpretations state that when a bank's RNDIP sales program uses visual media (such as television broadcasts, ATM screens, billboards, signs, posters, and written advertisements) or promotional materials (such as brochures), the bank typically uses a short, logo format disclosure. These shorter, logo format disclosures are generally boxed, set in boldface type, and displayed in a conspicuous manner. The text of an acceptable logo format disclosure typically includes the following statements:

- Not FDIC-insured
- No bank guarantee
- May lose value

Situations When Disclosures Are Typically Not Used

The following situations involving RNDIP sales typically do not include disclosures:

- Radio broadcasts of 30 seconds or less.
- Electronic signs, including billboard-type signs that are electronic, time and temperature signs, and ticker tape signs.
- Signs, such as banners and posters, when used only as location indicators.
- Broker-dealers not affiliated with the bank need not make disclosures on RNDIP confirmations and account statements that may incidentally, with a valid business purpose, contain the name of the bank.

Customer Acknowledgments

At account opening, a best practice is for a bank to obtain a signed customer statement acknowledging that the customer has received and understands the minimum disclosures. These customer acknowledgments provide the full disclosure language (not the shortened version), and the bank retains the signed statement.

Confirmations and Account Statements

Confirmations and account statements should contain the minimum disclosures if the confirmations or account statements contain the name or the logo of the bank or an affiliate. If a customer's periodic deposit account statement includes account information concerning the customer's RNDIPs, the information concerning these products should be clearly separate from the information concerning the deposit account, contain the minimum disclosures, and state the identity of the broker-dealer.

Web Linking and Other Electronic Relationships

Banks commonly advertise RNDIP sales programs on their websites and mobile apps and provide a web link or other means of connecting customers to the broker-dealer providing the products and services. Such relationships pose ~~reputation,~~ compliance, and operational risks to a bank that should be properly managed. A key concern is the potential for customer confusion regarding whether the bank or the broker-dealer is either providing or endorsing the RNDIPs. This concern is heightened when the bank engages an affiliated entity or brands the sales program with a name similar to the bank's, displays the bank's logo on a web page through which the broker-dealer provides products or services, or permits the broker-dealer to offer services that appear to be located on the bank's own web page or mobile app. Banks should take steps to prevent customer confusion that include providing conspicuous disclosures clearly indicating the broker-dealer is the provider of the RNDIPs, as well as the minimum disclosures. For more information, refer to OCC Bulletin 2003-15, "Weblinking: Identifying Risks and Risk Management Techniques."

Social Media

Banks should establish an effective risk management program that identifies, measures, monitors, and controls the risks related to the banks' and third parties' use of social media in marketing RNDIPs. A bank's employees should be properly trained on the bank's social media policies and procedures. Bank management and the risk control functions should establish monitoring initiatives to determine practices adhere to the bank's established standards. For more information, refer to OCC Bulletin 2013-39, "Social Media: Consumer Compliance Risk Management Guidance: Final Supervisory Guidance."

Timing of Disclosures

Customers should receive the minimum disclosures

- orally during any sales presentation.
- orally when investment advice concerning RNDIPs is provided.
- orally and in writing before or at the time an RNDIP account is opened.
- in advertisements and other promotional materials.

If a bank solicits customers to its RNDIP sales program by telephone or mail, the bank typically verifies that customers receive a customer statement, signed at account opening, that acknowledges the customer has received and understands the minimum disclosures.

Additional Disclosures

When applicable, the bank should disclose to the customer the existence of an advisory or other material relationship between the bank and an affiliate of the bank. When there is a material relationship, the bank should disclose to the customer the existence of any fees, penalties, or surrender charges.

For example, the bank should disclose any remuneration it receives for providing investment advisory services or administrative services (such as shareholder services or sub-transfer agent fees) to a particular mutual fund offered in the bank's RNDIP sales program. Banks may meet this disclosure obligation by providing the bank customer the mutual fund's prospectus, which contains disclosures regarding fees that the bank receives from the mutual fund. If the prospectus does not include such fee disclosures, the bank should make the fee disclosure by some other means.

Bank management should pay special attention to the accuracy, transparency, and meaningfulness of the disclosures regarding RNDIPs that are more complex. This includes providing customers comprehensive disclosures regarding the costs and benefits associated with the purchase, early liquidation, or exchange or replacement of annuities. These products may entail higher commissions, significant surrender charges, tax ramifications, and factors customers should consider before replacing one annuity contract with another annuity. When offering less liquid or illiquid RNDIPs, such as structured products, hedge funds, and private

equity funds, a bank should provide detailed disclosures covering the risks, costs, terms and conditions, conflicts of interest, and other items of concern.

Advertising

Examiners should assess the procedures a bank uses to determine that bank-related sales advertisements are accurate, do not mislead customers about the nature of the product, and include required disclosures. For example, claims about "no fees" or "no charges" are not accurate if the selling bank collects fees for investment advisory services or collects fees for shareholder accounting on the product or service being advertised. Similarly, advertisements and written and oral presentations should not imply that the bank stands behind an investment product unless this statement is accurate.

Promotional materials should not contain qualifying remarks that limit the effectiveness of the required disclosures. For example, qualifying language embedded in sales literature that is designed to assure the customer that the possibility of loss is unlikely or remote diminishes the clarity of the standard investment risk disclosures. Another example of potentially misleading language involves annuity presentations that use phrases such as "guaranteed" or "insured" without specifically referring to the entity that is providing the guarantee or insurance. In addition, annuity product promotional materials that use language customarily associated with insured deposits or that refer to annuities as similar to deposits are confusing and contradict the minimum disclosures. Such materials should avoid terms like "deposit" and "withdrawal," and comparisons to deposits that could lead a customer to believe annuities are deposits.

Disclosures Related to Bank Sales of Insurance and Annuities

Banks engaged in retail sales activities of insurance or annuities directly or through an arrangement with any person engaged in such activities at an office of the institution or on behalf of the institution must comply with 12 CFR 14, "Consumer Protection in Sales of Insurance," which implements section 305 of the GLBA. These regulations impose disclosure requirements similar to the GLBA networking exception and the discussion in the Interagency Statement, but require additional disclosures. The additional disclosures include the lack of any federal government agency providing guarantees, as well as specific requirements when an extension of credit is being considered by the bank simultaneous with the offering of an insurance or annuity product. For more information, refer to appendix E of this booklet.

Communications With Customers

Beyond the required disclosures, bank policies and procedures should determine the need for periodic and ongoing communications with customers to help them understand their investments and to remind customers periodically that the products they have purchased are not FDIC-insured deposits. Policies typically outline customer communications the bank should make during periods of market stress and assign responsibilities for such communications.

Qualifications and Training

Examiners should determine whether banks engaged in direct sales of RNDIPs properly designate the bank personnel and the specific products these employees are authorized to recommend and sell. Such authorized bank personnel should possess the necessary skills and receive appropriate training before engaging in such activities. Examiners should determine whether training programs for bank personnel and their supervisors provide them with thorough product knowledge, an understanding of consumer protection requirements, and instruction on how to conduct these activities in compliance with applicable laws and regulations, and consistent with safe and sound banking practices. Examiners assess the process the bank uses to determine that such sales personnel are properly qualified and adequately trained to engage in permissible bank direct RNDIP sales activities. If bank personnel sell or recommend securities, the training should be substantively equivalent to that required for personnel qualified to sell securities as registered representatives.

Examiners should determine whether banks implement periodic, effective training programs for unlicensed bank employees that have contact with bank customers, such as tellers or call center employees, to determine that these employees are making proper referrals and understand their limitations regarding the RNDIP sales program. A bank's compliance, risk management, and internal audit personnel should also be properly trained and knowledgeable regarding RNDIP sales program requirements.

Banks using broker-dealers for their RNDIP sales programs should require these third parties to periodically report on their hiring practices, changes in such practices, turnover and rationale for turnover, and sales representatives' licensing, registration, continuing education requirements, and additional training. Sales programs using dual employees should implement effective training programs to address the banking and securities regulatory requirements.

Bank direct sales personnel and broker-dealer sales representatives may obtain various industry designations and credentials. While these credentials may be beneficial, the bank should develop policies and procedures for the appropriate usage of such designations in a manner that does not result in misleading or confusing a retail customer.

Best Interest, Suitability, and Sales Practices

Best Interest and Suitability Standards

Regulation Best Interest establishes a "best interest" standard of conduct for broker-dealers when they make recommendations to retail customers, as defined in the regulation.[20] Transactions with retail customers are the most common bank RNDIP arrangements. FINRA

[20] "Retail customer" means a natural person, or the legal representative of such natural person, who (1) receives a recommendation of any securities transaction or investment strategy involving securities from a broker, dealer, or a natural person who is an associated person of a broker or dealer; and (2) uses the recommendation primarily for personal, family, or household purposes (17 CFR 240.15l-1(b)(1)).

Rule 2111 governs general suitability obligations applicable to broker-dealers when they make a recommendation to a customer but does not apply to recommendations subject to

Regulation Best Interest.[21] The Interagency Statement also provides guidelines on suitability and sales practices limited to direct bank RNDIP sales, which are rare.

Direct bank sales or recommendations should be consistent with safe and sound banking practices, which are discussed in the "Suitability and Sales Practices" section of the Interagency Statement. Regulation Best Interest does not apply to sales or recommendations made directly by the bank. A bank, however, may decide to voluntarily adopt aspects of Regulation Best Interest in its direct sales programs. If a bank has decided to adopt aspects of Regulation Best Interest, this should be clearly set forth in the bank's policies and procedures and tested for by the bank's compliance program.

For sales made directly by a bank, the bank should have reasonable grounds for believing that the specific product recommended is suitable for the customer based on information disclosed by the customer. Personnel involved in direct bank sales should make reasonable efforts to obtain information directly from the customer regarding the customer's financial and tax status, investment objectives, and other information that may be useful or reasonable in making investment recommendations to that customer. This information should be documented and updated periodically.

The SEC's Regulation Best Interest enhanced the prior suitability standard applicable to broker-dealers for securities recommendations to retail customers by establishing a new "best interest" standard of conduct.[22] Under the best interest standard, when making a recommendation of any securities transaction or investment strategy involving securities (including account recommendations) to a retail customer, a broker-dealer has a general obligation to act in the best interest of the retail customer at the time the recommendation is made, without placing its own financial or other interest of the broker-dealer or associated person ahead of the retail customer's interest.[23] In order to meet this general obligation, a broker-dealer must comply with the following four component obligations:

- Disclosure obligation[24]
- Care obligation[25]

[21] Because Regulation Best Interest applies to retail customers only, Rule 2111 is still in effect for nonretail customers, which include entities and institutions, as well as natural persons who will not use recommendations primarily for personal, family, or household purposes (e.g., small business owners and charitable trusts). See FINRA Regulatory Notice 20-18.

[22] Refer to 84 Fed. Reg. 33318.

[23] Refer to 17 CFR 240.15l-1(a)(1).

[24] Refer to 17 CFR 240.15l-1(a)(2)(i).

[25] Refer to 17 CFR 240.15l-1(a)(2)(ii).

- Conflict of interest obligation[26]
- Compliance obligation[27]

Regulation Best Interest also includes record-making and recordkeeping requirements for broker-dealers regarding certain information collected from or provided to retail customers.[28] Refer to the sections that follow for more detail on each obligation and the record-making and recordkeeping requirements.
Regulation Best Interest applies to bank-related securities sales by bank subsidiaries registered as broker-dealers, affiliated broker-dealers, and unaffiliated broker-dealers operating under networking agreements with banks. This rule applies whether such sales are made on bank premises or at a separate location. A bank should assess its RNDIP sales program policies and procedures in addressing the best interest standard of Regulation Best Interest when sales are conducted through a broker-dealer.

Broker-dealers engaged in a bank's RNDIP sales program are required by Regulation Best Interest to meet this core best interest standard when making recommendations to a retail customer of any securities transaction (e.g., purchase, sale, or exchange) or any investment strategy involving securities (including an explicit hold recommendation, an implicit hold recommendation when the broker-dealer has agreed to monitor a retail customer's account, and recommendations to transfer from one account type to another).[29]

Disclosure Obligation

The disclosure obligation in Regulation Best Interest requires a broker-dealer, prior to or at the time of making a recommendation, to fully and fairly disclose to the retail customer, in writing

- all material facts relating to the scope and terms of the relationship with the retail customer including:
  - that the broker-dealer or an associated person is acting as a broker-dealer or associated person of a broker-dealer with respect to the recommendation;
  - the material fees and costs that apply to the retail customer's transactions, holdings, and accounts; and
  - the type and scope of services provided to the retail customer, including material limitations on the securities or investment strategies involving securities that may be recommended to the retail customer; and
- all material conflicts of interest associated with the recommendation.[30]

[26] Refer to 17 CFR 240.15l-1(a)(2)(iii).

[27] Refer to 17 CFR 240.15l-1(a)(2)(iv).

[28] Refer to 17 CFR 240.17a-3(a)(24), 240.17a-4(e)(10).

[29] Refer to 84 Fed. Reg. 33325, 33336.

[30] Refer to 17 CFR 240.15l-1(a)(2)(i).

With regard to the above-mentioned requirement that the broker-dealer or associated person disclose that they are acting in their capacity[31] as a broker-dealer or associated person with respect to a recommendation, the SEC presumes that a violation of the disclosure obligation occurs when a broker-dealer uses the terms "adviser" or "advisor" in his or her title, without being an RIA or a supervised person of an RIA.[32] With respect to fees and costs, a broker-dealer may deliver a standardized disclosure based on reasonable dollar and percentage ranges, with a note that specific fee information would be provided in a prospectus.[33] The fee disclosure should include an explanation of how and when the fees will be deducted from a customer's account (e.g., on a per transaction basis or quarterly).[34] The types and scope of services that would be considered material include, for example, any monitoring service[35] that would be provided and the scope and frequency of such service, and whether there are account balance requirements.[36] Other material facts relating to scope and terms of the relationship include the broker-dealer's investment philosophy, approach, or strategy, and the risks associated with a recommendation.[37] Material conflicts of interest relating to a recommendation include, for example, receipt of compensation from recommending proprietary products or products with third-party arrangements (e.g., revenue sharing and mutual fund service fees).[38]

There is no standardized form that broker-dealers must use to comply with the disclosure obligation. The SEC permits the use of existing disclosures and standardized documents, such as a product prospectus, an account opening agreement, or a fee schedule.[39] Regardless of the type of documentation used by a broker-dealer, Regulation Best Interest requires the disclosure to be concise, clear, and understandable.[40] Broker-dealers are authorized to deliver the disclosure by electronic means pursuant to SEC guidance.[41]

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[31] Refer to 17 CFR 240.15*l*-1(a)(2)(i)(A).

[32] Refer to 84 Fed. Reg. 33350-1. There is an exception for those using these terms for roles defined by federal statute that do not involve providing investment advisory services to retail customers (e.g., when acting as a municipal adviser, commodity trading adviser, or adviser to a special entity).

[33] Ibid. 33354–55.

[34] Ibid.

[35] It is important to understand that Regulation Best Interest does not require broker-dealers to offer account monitoring services.

[36] See 84 Fed. Reg. 33358–59.

[37] Ibid. 33359.

[38] Ibid. 33357.

[39] Ibid. 33367.

[40] Ibid. 33366.

[41] Ibid.

Banks' RNDIP sales programs should have a process for assessing whether broker-dealer disclosures provide the required information to enable retail customers to make informed decisions about a recommendation or transaction. There should also be a process for ensuring the timeliness of the distribution of the disclosures and that information in the disclosures is being updated as needed. Banks may wish to consider what aspects of the Disclosure Obligation are appropriate to incorporate into their direct sales of RNDIP products.

Care Obligation

The care obligation in Regulation Best Interest requires a broker-dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to exercise reasonable diligence, care, and skill to

- understand the potential risks, rewards, and costs associated with the recommendation, and have a reasonable basis to believe that the recommendation could be in the best interest of at least some retail customers.
- have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation and does not place the financial or other interest of the broker-dealer or such natural person ahead of the interest of the retail customer.
- have a reasonable basis to believe that a series of recommended transactions, even if in the retail customer's best interest when viewed in isolation, is not excessive and is in the retail customer's best interest when taken together in light of the retail customer's investment profile, and does not place the financial or other interest of the broker-dealer or natural person making the series of recommendations ahead of the interest of the retail customer.[42]

Banks' RNDIP sales programs should have a process for obtaining customer information used to develop their investment profiles, as well as the broker-dealer's process for determining whether there is a reasonable basis to believe that a recommendation is in the best interest of a retail customer. This information should be updated periodically. Supervisory personnel should review such information when determining whether the transaction or recommendation is in the best interest of a customer.

Conflict of Interest Obligation

The conflict of interest obligation under Regulation Best Interest imposes an obligation on a broker-dealer entity to establish, maintain, and enforce written policies and procedures reasonably designed to

- identify and at a minimum disclose, pursuant to the disclosure obligation, or eliminate all conflicts of interest associated with such recommendations.

[42] Refer to 17 CFR 240.15l-1(a)(2)(ii).

- identify and mitigate any conflicts of interest associated with recommendations that create an incentive for a natural person who is an associated person of a broker or dealer to place the interest of the broker or dealer, or such natural person making the recommendation, ahead of the interest of the retail customer.
- identify and disclose any material limitations placed on the securities or investment strategies involving securities that may be recommended to a retail customer and any conflicts of interest associated with such limitations, in accordance with the disclosure obligation.
- prevent such limitations and associated conflicts of interest from causing the broker-dealer, or a natural person who is an associated person of the broker-dealer to make recommendations that place the interest of the broker-dealer, or such natural person ahead of the interest of the retail customer.
- identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited period of time.[43]

Banks should review the broker-dealer's policies and procedures related to the conflict of interest obligation to determine whether they address conflicts of interest at both the firm and associated person level, as well as which conflicts of interest should be disclosed, mitigated, or eliminated.

Compliance Obligation

In addition to the policies and procedures required by the conflict of interest obligation, a broker-dealer entity is required to establish, maintain, and enforce written policies and procedures reasonably designed to achieve compliance with Regulation Best Interest.[44] According to the SEC, the policies and procedures related to the compliance obligation used would generally include information relating to controls, remediation of noncompliance, training, and periodic review and testing.[45] Banks should review these policies and procedures used by broker-dealers and have a process for evaluating whether such documents contain information required under Regulation Best Interest.

Customer Relationship Summary (Form CRS)

In addition to the disclosure obligation, the SEC requires registered broker-dealers and investment advisers to provide a brief relationship summary of the firm to retail investors.[46]

[43] 17 CFR 240.15l-1(a)(2)(iii).

[44] 17 CFR 240.15l-1(a)(2)(iv).

[45] See 84 Fed. Reg. 33397–8.

[46] "Form CRS Relationship Summary; Amendments to Form ADV," 84 Fed. Reg. 33492; "Form CRS, for preparation, filing and delivery of Form CRS," 17 CFR 240.17a-14. "Retail investor" means a natural person, or the legal representative of such natural person, who seeks to receive or receives services primarily for personal, family, or household purposes. See 17 CFR 240.17a-14(e)(2).

This customer relationship summary, also referred to as Form CRS, must include certain information about

- the types of client and customer relationships and services the firm offers.
- the fees, costs, conflicts of interest, and required standard of conduct associated with those relationships and services.
- whether the firm and its financial professionals currently have reportable legal or disciplinary history.
- how to obtain additional information about the firm.

The Form CRS rules outline formatting, delivery, and recordkeeping requirements. Registered broker-dealers and investment advisory firms are required to provide the Form CRS to retail investors before or at the earliest of

- a recommendation of an account type, a securities transaction, or an investment strategy involving securities;
- placing an order for the retail investor; or
- opening of a brokerage account for the retail investor.

For existing customers, Form CRS must be delivered before or at the time of

- opening a new account separate from the investor's existing account,
- recommending a rollover of assets from a retirement account into a new or existing account or investment, or
- recommending or providing new brokerage services or investments that do not necessarily involve the opening of a new account and would not be held in an existing account.

Broker-dealers are required to file an initial form with the SEC and post current versions of the form on their public website, if a broker-dealer has a website. The rule guides broker-dealers to include certain information, but there is not a single specific form or format that all broker-dealers must use. For further information, refer to the SEC's December 17, 2021, "Staff Statement Regarding Form CRS Disclosures" as an additional resource.

Banks should have a process for evaluating a broker-dealer's or investment adviser's compliance with the Form CRS requirements. Banks should review the firm's documentation that provides a view into the firm's process for drafting and updating the form, filing the form with the SEC, posting the form to a public website, and delivering the form to retail investors in a timely manner. Additional information about Form CRS can be found on the SEC's website.

Best Interest and Suitability Supervision and Broker-Dealer Oversight

Banks conducting bank direct RNDIP transactions are responsible for supervising these transactions by verifying the transactions are suitable and sales practices are appropriate. Banks should implement effective approval processes and surveillance systems over bank direct RNDIP transactions to determine suitability and to monitor sales practices. Bank

compliance, risk management, and internal audit should also be monitoring these sales practices. The OCC is the primary regulator of bank direct RNDIP sales programs. An RNDIP recommendation or sale by a bank directly should be made only if the recommendation or sale complies with safe and sound banking practices. Refer to the "Suitability and Sales Practice" section of the Interagency Statement for a discussion of safe and sound banking practices Thus, for bank direct RNDIP sales activities, examiners should conduct risk-based transaction and account sampling to evaluate sales practices. To the extent the bank has voluntarily adopted aspects of Regulation Best Interest into its direct sales program, examiners should determine whether it has been clearly set forth in the bank's policies and procedures, and evaluate the bank's compliance with Regulation Best Interest as adopted.

Most bank RNDIP sales programs are indirect, meaning the bank relies on broker-dealers to recommend and sell retail brokerage products and services to bank customers. A bank should consider how its customer base will interact with the registered representatives brought in by the broker-dealer selected by the bank to sell these products. By referring its customers to a broker-dealer, the bank may be viewed as tacitly endorsing the RNDIP sales made by those brokers to those customers. To the extent the bank has retail customers that may be vulnerable to a broker's hard sell, the bank should have procedures in place to determine that these retail customers are not sold investments that are not in their best interest.

The broker-dealer is responsible for supervising its sales representatives and ensuring the securities transactions comply with the requirements under Regulation Best Interest. Depending on the program's structure, securities sales and account openings may be reviewed by sales managers first before proceeding to an office of supervisory jurisdiction (OSJ) for final approval. OSJs are staffed with broker-dealer "principals" who are supervisors responsible for reviewing and approving securities transactions and brokerage account openings. Some firms use a centralized principal review desk while others establish multiple OSJs within geographic regions. The OCC is not the functional regulator for broker-dealer RNDIP programs. OCC examiners should therefore avoid conducting risk-based transaction and account sampling to evaluate broker-dealer sales practices and to make best interest determinations.

Banks using broker-dealers in their RNDIP sales programs should implement an effective oversight system for monitoring sales practices. Banks should require the broker-dealer to provide ample information to facilitate this oversight. Such information should provide a view into whether the sales representatives are satisfying Regulation Best Interest. Banks should focus on sales patterns and disclosures to retail customers to identify potential best interest issues and elevated customer risk. Examples of sales practice and disclosure information a bank should request from a broker-dealer include

- sales production and revenues by product, branch, and sales representative.
- sales to first-time and risk-averse investors.
- sales made by high- or low-volume salespeople.
- sales to senior customers.
- sales of complex products.

- surveillance reports.
- alerts indicating trade and policy exceptions.
- reversed trades.
- trade errors.
- promotional marketing programs that target a class of customers or focus on specific products or services.
- early redemptions (after a short holding period) of mutual funds, annuities, or structured products.
- replacement activity on annuities and structured products.
- commissions and other compensation rates on products.
- a schedule of fees and charges to retail customers, including disclosures provided to retail customers relating to the costs of services.
- lists of proprietary products sold to retail customers.
- disclosures related to monitoring of retail customers' accounts.
- disclosures on material limitations on accounts or services recommended to retail customers.
- sales representatives subject to heightened supervision for sales practice issues.
- customer complaints, litigation, and settlements.
- information regarding functional regulators' findings and current reviews that relate to the bank's sales program.

Examiners should determine whether a bank maintains an effective suitability (for bank direct sales) or Regulation Best Interest (for broker-dealer sales) compliance system, depending on the applicable regulatory framework. The examination approach should focus on the system the bank has in place to make suitability or best interest inquiries and suitability or best interest judgments, and periodic account reviews. Examiners generally should review sales patterns rather than individual sales for suitability or best interest issues. Examiners' assessments of sales practices conducted by a broker-dealer should include a review of the sales practice information noted previously and the broker-dealer's process for having a reasonable basis to believe that the recommendations are in the best interest of the retail customer. Examiners should also review any functional regulator's reports to determine whether the primary regulator has identified any significant issues. Examiners' sales practice evaluations should also include reviews of banks' compliance, risk management, and internal audit coverage and findings. To the extent practicable, examiners should rely on the functional regulators' sales practice reviews rather than conducting specific transaction testing or best interest sampling.

If information is insufficient to make an informed evaluation, examiners should criticize the bank for not obtaining the necessary information for proper third-party management of sales practices. If the functional regulator has not recently reviewed sales practices or if issues are identified, examiners should consult with their EIC about pulling a limited risk-based sample and requiring the bank's risk control functions to conduct such a review. If there are concerns with the bank's risk control functions conducting the review, examiners should consult with the EIC about conducting an examination of the broker-dealer's sales practices through

functional regulation.[47] Before commencing an examination, the examiner is required to provide reasonable notice to and consult with the appropriate functional regulator.[48] In addition, the examiner should, "to the fullest extent possible," use examinations and other reports of other federal and state regulatory authorities to avoid duplication of examination activities, reporting requirements, and requests for information and to ensure the bank is not subject to conflicting supervisory demands.[49]

Sales Practice Considerations

Examiner sales practice assessments should consider the bank's customer base, distribution channels, size and experience of the sales force, and the array of RNDIPs and services offered. Examiners should also stay current on any sales practice issues and concerns identified by the functional regulator. Examiners should consider the following illustrative issues and practices when reviewing a bank's RNDIP sales practices.

General improper sales practices: Examiners should inquire about any indications of improper sales practices involving any RNDIP offering. Improper sales practices may result in unsuitable transactions (for direct bank sales) or, for broker-dealer sales, transactions that are not in the best interest of retail customers or when the broker-dealer places its own interests or other interests ahead of the retail customer's interests. Examples of this are RNDIPs that do not meet the customer's investment objectives, risk tolerance, time horizons, or liquidity needs , or when reasonable alternatives were not considered.[50] This raises safety and soundness issues as well as significant consumer protection issues. Sales representatives engaged in improper sales practices may be focused on generating commissions without considering a customer's investment profile and needs. Such practices may include excessive trading or churning of a customer's account, a concentration in high commission products, or inappropriately switching or replacing RNDIPs with another RNDIP. Other unsuitable or inappropriate tactics may include misrepresenting RNDIPs and misleading or pressuring customers and failing to disclose material limitations on accounts or services recommended to customers. In extreme circumstances, a sales representative may engage in outright fraud, unauthorized trading, front running using insider information, late trading, or market timing.

Senior clients: Banks' customer bases may include senior clients who should receive heightened investor protection depending on their needs, objectives, risk tolerance, investment experience, and understanding. Seniors may be vulnerable to, and attractive targets for, broker-dealers that engage in improper sales practices. Many of these customers

[47] Refer to appendix A of the "Bank Supervision Process" booklet of the *Comptroller's Handbook* for additional information on functional regulation.

[48] Refer to 12 USC 1831c(f)(1).

[49] Refer to 12 USC 1831c(f)(2).

[50] The SEC has indicated that broker-dealers should also consider reasonably available alternatives as part of having a reasonable basis for believing that a particular recommendation is in the best interest of the client. Therefore, a failure to consider reasonably available alternatives would be an improper sales practice under Regulation Best Interest. See 84 Fed. Reg. 33381.

rely on investments or savings for retirement income. A low interest rate environment may lead many investors to "reach for yield" in pursuit of higher returns. This involves taking on greater investment risks and an increased potential for principal losses. Senior clients may not have the ability to absorb or recover such losses. Banks should have appropriate procedures in place to determine sales to senior bank clients meet the suitability or best interest standard, as appropriate.

Some bank RNDIP sales programs may have registered representatives holding themselves out as having expertise in financial services for seniors, with designations such as "certified senior adviser," "senior specialist," or "certified financial gerontologist." Senior clients may incorrectly believe that individuals who use such designations are particularly qualified to assist them. Firms that allow the use of any title or designation that conveys an expertise in providing seniors investments or retirement planning when such expertise does not exist may violate the antifraud provision of the federal securities laws. Improper sales practices may involve registered representatives using sales tactics aimed at seniors, such as "free lunch" seminars. Both FINRA and the SEC have conducted examinations at broker-dealers that provide such seminars and found troubling sales practices. These include the use of inaccurate or exaggerated claims regarding the safety, liquidity, or expected returns of the investment or strategy being touted; scare tactics; misrepresentations or material omissions about the product or strategy; conflicts of interest; and misleading credentials used by persons sponsoring or participating in the seminar. For more information on these practices, refer to appendix H of this booklet.

Automated investor profiles, investment analysis, and financial plans: Many registered representatives use software programs that create investor profiles to assist in investment sales or recommendations and in developing a financial plan. A customer's responses to inquiries about his or her financial position and relevant personal history are part of the profile. The software program then matches the customer's investment needs and objectives to the appropriate investment product in the bank's RNDIP sales program. This type of software is generally a tool, not a substitute for professional judgment. Examiners should determine whether banks understand the logic behind the programs and monitor the use of such software programs. Banks typically determine whether the software program favors proprietary mutual funds or other bank-affiliated products or the unaffiliated third party's products over other investment products in the RNDIP sales program and the costs associated with the use of those affiliated or the unaffiliated third party's products.

Sales representatives and investment advisers may use automated investment analysis models when making investment strategy recommendations. These models may include quantitative and qualitative assumption inputs, algorithms, and output that present customer simulated investment portfolio options. Financial planning software also generally involves using quantitative and qualitative inputs to generate estimates of asset levels needed to achieve financial goals and objectives. These investment analysis and financial planning methods are models that should be properly managed. For more information, refer to OCC Bulletin 2011-12.

Mutual funds: Examiners should investigate potential suitability or best interest issues in mutual fund sales involving missed "breakpoints." Mutual funds with front-end sales charges may offer customers the availability of breakpoints that are discounts on the sales charges for purchases at specific investment levels. These breakpoints may be available for initial lump sum purchases or for subsequent purchases using letters of intent, rights of accumulation, or exchange privileges that consider customers' cumulative intended or actual holdings. Breakpoints benefit customers by reducing the front-end sales charges that are deducted from the amount invested in a mutual fund, but generally result in lower commissions for sales representatives. The potential for abuse usually occurs when the sale of several different mutual fund shares takes place in quantities just below the level at which the purchaser would qualify for reduced sales charges on any one of the funds.

Examiners should review patterns of mutual fund redemptions that occur after a short holding period. Such activity could indicate inappropriate sales practices involving churning a customer's account or market timing a fund, particularly involving funds with front-end sales charges.

Suitability or best interest issues may arise with respect to mutual fund sales practices that involve the sale of an inappropriate share class to a customer when such mutual fund share class does not meet the customer's needs and objectives or (under Regulation Best Interest) there is a reasonably available alternative share class. Mutual funds typically offer multiple share classes with different pricing. Generally, share funds are front-end loaded share classes that deduct the sales charge from a customer's initial investment at the time of purchase and may have lower annual fund operating expenses relative to other share classes. B shares do not charge an upfront sales fee, but instead assess the customer a back-end load or contingent deferred sales charge (CDSC) for selling the shares within a defined holding period, which can be lengthy. Operating expenses are generally higher on B shares than A shares. C shares do not assess a front-end sales charge at the time of purchase, but commonly impose a one-year CDSC and have higher operating expenses than A or B shares. Sales representatives should consider the customer's investment objectives, time horizon, and purchase amounts to determine which mutual fund share class is most suitable or in the best interest of the customer. Additionally, as part of the disclosure obligation under Regulation Best Interest, all mutual fund fees, including fees paid by the mutual funds to a broker-dealer and conflicts of interest arising from such payment, must be fully and fairly disclosed to the customer.

A bank should pay special attention when its customers are being sold mutual funds to implement fixed income strategies, given the sensitivity of these funds to changes in interest rates and the potential for liquidity issues with the underlying holdings. These risks can affect performance and result in the potential loss of principal. The bank should carefully consider these risks as part of its suitability or best interest determination and fully explain these risks to investors when recommending such investments.

Sales of mutual funds implementing complex investment strategies are generally neither suitable nor in the best interest of those customers with investment objectives to preserve capital or with conservative risk tolerances. These products may not be appropriate for less sophisticated customers who may not possess the necessary knowledge and investment

experience to understand fully the products' risks. For example, a bank's RNDIP program may offer "liquid alternative" mutual funds that implement alternative investment strategies similar to hedge funds but provide customers daily redemption rights. In comparison with more traditional mutual funds, these liquid alternative mutual funds are likely to implement more complex investment strategies that make greater use of leverage, short selling, derivatives, commodities, currency positions, concentrated positions, and directional bets. These funds can be more volatile and impose higher fees. Heightened supervision is warranted for sales of complex mutual funds. FINRA's Regulatory Notice 12-03 provides guidance to brokers on heightened supervision of complex products.

ETFs: Examiners should inquire about any potential sales practice issues related to complex ETFs. Complex ETFs include leveraged ETFs, inverse ETFs, and leveraged inverse ETFs. Complex ETFs are speculative trading vehicles that require daily monitoring and may not be appropriate as a long-term holding, and present additional investment risks beyond those risks inherent in passively managed ETFs. The SEC and FINRA have jointly issued an Investor Alert that cautions individual investors about the risks of leveraged and inverse ETFs. This Investor Alert makes investors aware that the performance of these complex ETFs over a period longer than one day can differ significantly from the ETFs' stated daily performance objectives. Refer to the SEC Investor Bulletin "Leveraged and Inverse ETFs: Specialized Products With Extra Risks for Buy-and-Hold Investors."

Annuities: Examiners should evaluate any potential sales practice issues involving fixed rate and variable annuities as these are common RNDIPs offered through the bank distribution channel and may be sold to senior clients. Commissions on annuities typically are higher relative to other RNDIPs' payouts, which can provide an incentive for sales representatives to engage in inappropriate sales. A bank offering annuities on its RNDIP platform should look for indicators that a sales representative is soliciting the purchase, exchange, replacement, sale, or liquidation of an annuity for the exclusive purpose of generating a sales commission. These indicators may be identified through a review of surveillance information that tracks brokers' sales activities and commissions by product type and reveals a skewing toward annuities.

When making suitability or best interest determinations regarding the appropriateness of variable annuities for a customer, the bank or broker-dealer should focus on the underlying subaccount investment selections offered through the annuity product to determine these selections meet a customer's investment objectives and risk tolerance given that the value may decline due to market losses. In a low interest rate environment, fixed rate annuity sales that impose long surrender penalty periods or provide low returns should be closely scrutinized.

Annuities sold to customers with short-term investment horizons may be unsuitable or not in the best interest of these customers, since annuities are intended to be long-term holdings. A customer that seeks to redeem an annuity product early is generally subjected to a steep surrender charge. These surrender charges typically are imposed for the first five to 12 years the purchaser holds the annuity investment. Another issue is an inappropriate concentration

of a customer's assets in annuities when a customer does not have liquid assets or income sources sufficient to meet his or her needs.

An RNDIP program should include age considerations particularly when annuities are in the product mix to support suitability and best interest determinations. Underwriting requirements imposed by annuity providers generally recognize that an investor's time horizon is a critical factor that should be considered, and many annuity underwriters impose age limit caps on their product. Annuity sales to senior customers should be carefully reviewed to determine the needs of these investors are met before locking their assets in a generally illiquid product. Annuities sold to younger customers should also be scrutinized because early redemptions of this product could result in tax penalties if the customer is less than 59 1/2 years old, in addition to the standard annuity surrender charges.

One of the advantages of an annuity is that it provides customers tax-deferred benefits on the annuity's earnings. Sales of annuities to 401(k) plans and IRAs should, however, be carefully reviewed, because the earnings in a 401(k) or IRA already are tax advantaged, and the annuity may simply add a layer of cost to these investments with no additional tax benefit.

Patterns or practices of annuity exchanges or replacements should be investigated to determine the suitability of such activities or whether they satisfy the best interest standard (as applicable), particularly if the customer incurs a surrender charge. Heightened controls are appropriate for such transactions, including a full analysis of the associated costs and benefits of exchanging or replacing an annuity. This analysis should include a determination that the transaction qualifies as tax free under section 1035 of the Internal Revenue Code.

Complex securities: Sales practices involving complex securities are inherently higher risk as these products generally are illiquid, may employ leverage, frequently involve complex payout structures, experience greater volatility, may be hard to value, and have an increased potential for principal losses. Additionally, these products are simply more difficult for many sales representatives and customers to understand. Examples of such products include structured products, structured finance, complex ETFs, and private offerings, including hedge funds and private equity funds, among other products. Heightened supervision of sales practices over these complex products is essential for consumer protection. FINRA's Regulatory Notice 12-03 provides guidance to brokers-dealers on heightened supervision of complex products.

Proprietary products: Because of the inherent conflicts of interest associated with proprietary products, to provide proper investor protections, a bank should focus special attention on sales practices involving these products. Proprietary products are managed, sponsored, underwritten, or syndicated by the bank or its affiliated entities. These affiliations and conflicts should be properly managed and disclosed. The bank's RNDIP product platform may include proprietary products, such as bank-affiliated mutual funds, ETFs, annuities, hedge funds, and private equity funds. Other proprietary products offered in some RNDIP programs may include structured products and securities underwritten or syndicated by the bank or its affiliated entities.

Licensing limitations: Some banks' RNDIP sales programs may authorize only a narrow set of products that sales representatives may recommend and sell. In such instances, the sales representatives may have license limitations that may result in concentrated product sales to customers. For example, a sales representative licensed and authorized to sell only fixed rate annuities may recommend these products without consideration of products that are more suitable or that meet the best interest standard. Because this can raise suitability or best interest concerns, such situations may warrant a discussion with the bank on the limitations of the sales representatives.

Investment advisory platform: Broker-dealer sales representatives are increasingly also RIA employees, or dual-hatted employees, offering both brokerage products and various advisory programs. Acting as an investment adviser raises additional investor protection issues for an RNDIP program, as investment advisers are held to a fiduciary standard, which is higher than the best interest standard applicable to broker-dealers. While the RIA standard is more akin to a bank "fiduciary standard," it still ultimately allows disclosures to cure conflicts.
Several key sales practice issues arise from these dual employee arrangements (when employees are employed by both a broker-dealer and an RIA). The threshold issue is in what capacity the dual employee is acting. If the individual is acting as an associated person of a broker-dealer, the individual must comply with Regulation Best Interest and must consider all types of accounts offered by the financial professional (i.e., both brokerage and advisory accounts) when recommending an account. In making this determination, the dual employee should consider a customer's needs and objectives as well as any potential higher costs associated with investment advisory products.

The second potential sales practice concern is whether the specific investment advisory program recommended by the dual employee is appropriate for the customer given the broad range of offerings and associated compensation schemes. These product platforms can range from a less expensive wrap account, when a customer directs the selection of investments from a finite list of mutual funds, to a higher cost managed account that grants the dual employee full investment discretion over the customer's portfolio. In many instances, the bank's customer may be significantly better off with a diversified low-cost index mutual fund or ETF than an investment advisory program with layers of advisory and fund fees.

Compensation

Commissions for Broker-Dealer Registered Representatives

Registered representatives usually receive sales-based incentive compensation, such as commissions based on transactions entered into by customers through a bank's RNDIP sales program. Commissions may vary based on the type of investment sold, and payouts typically increase with increased sales production. The bank typically assesses the structure of the broker-dealer's incentive compensation program to determine whether the program does not result in recommendations or sales that are not in the best interest of bank customers. Ideally, neutralization of payouts among the RNDIP offerings eliminates the incentive for broker-dealers to recommend products with higher sales payouts over other, perhaps more

appropriate products that offer less remuneration to the sales representative. The conflict of interest obligation of Regulation Best Interest requires broker-dealers to establish, maintain, and enforce written policies and procedures reasonably designed to identify and eliminate any sales contests, sales quotas, bonuses, and noncash compensation that are based on the sale of specific securities or specific types of securities within a limited period of time. The bank should not allow a broker-dealer to offer product-specific promotions or product-based sales contests, sales quotas, bonus programs, and noncash compensation for sales representatives because these types of initiatives provide inappropriate incentives and tend to encourage sales practices that are not in the best interest of retail customers.

An improperly designed compensation program can provide the bank, the broker-dealer, and the dual employees of both the bank and the broker-dealer with an incentive to place their own compensation interests above the interests of their customers. For example, when dual employees are acting in their registered representative capacity, they may receive commissions from the broker-dealer for making securities sales or recommendations to bank customers. Dual employees may also receive incentive compensation from the bank for performing bank duties. Examiners should determine whether management carefully monitors dual employees and maintains controls to help ensure that they are not steering bank customers toward investment products and away from bank products (or vice versa) based on the amount of commissions or incentive compensation they may receive.

One way for a bank to avoid having a dual employee's potential compensation drive his or her recommendation toward securities (e.g., mutual funds) and away from a bank product (e.g., a CD renewal) is to separate the RNDIP product sale and the CD renewal functions. A dual employee would be able to provide one of these services, but not both. Alternatively, if the bank permits a dual employee to offer both deposit products and RNDIPs, the bank could reduce the employee's potential conflict of interest by ensuring that the bank's incentive compensation for renewing maturing CDs is comparable to the broker-dealer's commission schedule.

To determine whether the broker-dealer's commission schedule could induce registered representatives to recommend products with higher commissions over other products that may better align with the customer's best interest, a bank should regularly review transaction and sales patterns along with customer complaints. For example, the bank can analyze increases in sales for a particular investment product to determine what the drivers of this growth may be, including making an assessment of whether the broker-dealer's commission schedule inappropriately encourages sales activity of those products. The bank typically determines whether broker-dealers are rewarding sales representatives for improper sales practices, such as churning a customer's account, inappropriate early liquidations of structured products, or unreasonable recommendations to surrender annuities before maturity with the simultaneous replacement of the surrendered annuity with another similar annuity.

Examiners should be aware that some broker-dealers reward supervisory principals for sales production. Principals are responsible for reviewing and approving brokerage account openings and individual sales transactions. In general, principals operate independently from the sales function and are typically not compensated based on the firm's sales production. In

some instances, however, a broker-dealer may use a producing principal structure that links supervisors' compensation to sales volumes. Examiners should inquire about the supervisory structure when evaluating the RNDIP sales program. A producing principal compensation structure has the potential to lead to conflicts of interest, given the incentives for a principal to sign off on a securities transaction or on an account opening, both of which would lead to a greater payout to the principal. Such supervisory structures elevate the risks to the sales program.

Commissions for Insurance Agents

Insurance agents receive sales-based compensation similar to broker-dealers; however, insurance brokers are not subject to Regulation Best Interest. Typical payouts for insurance agents are upfront commissions paid at the time of the sale and trailing commissions paid when a customer invests more money in an insurance or annuity product. The upfront commission rates paid on annuities tend to be high relative to other RNDIPs. The trailing commissions provide incentives for the agent to recommend the customer invest additional money in an existing product. Bank management should evaluate the payouts among brokerage and insurance products and consider to what extent they are neutralized to avoid unsuitable sales practices. Bank management should require the insurance agency to properly supervise insurance agents to prohibit inappropriate annuity replacement transactions for the purpose of increasing the insurance agent's compensation.

Fees for Investment Advisers

Many broker-dealer third parties are also RIAs providing investment advice. Compensation for RIAs is generally fee based, determined as a percentage of assets under management. The assets under management fee levels typically vary depending on the investment advice program offered. These programs can range from a customer-directed wrap account consisting of mutual funds to an investment adviser/broker-dealer exercising full investment discretion over a customer's portfolio of single securities. The investment adviser has a duty to act in the customer's best interests, which includes recommending the program best for the customer regardless of the payout to the adviser. Bank management should actively monitor these dual employee arrangements between a broker-dealer and an RIA, given the inherent conflicts of interest that exist in such programs and the potential that a bank customer may be charged unnecessarily high fees.

Compensation Considerations of Bank Supervisory Employees and Compliance and Audit Personnel

Bank supervisory employees who review and approve bank direct individual sales, accept new accounts, and review established customer accounts should not receive incentive compensation based on the profitability of individual trades or accounts that are subject to their review. Similarly, department auditors and compliance personnel should not participate in incentive compensation programs that are based directly on the success of sales efforts, nor should department auditors and compliance personnel report to a manager who receives this type of incentive compensation. In addition, bank management should not rely on

findings or recommendations from a third-party audit or control system if that third party's control personnel receive transaction-based incentive compensation. Additional factors to consider in the compensation area are discussed in the "Restrictions on Incentive Compensation and Referral Fees for Bank Employees—GLBA Networking Arrangement Exception and Regulation R" section of this document.

Sound Incentive Compensation Policies

Incentive compensation arrangements can be useful tools in the successful management of banking organizations. Compensation arrangements can, however, provide executives and employees with incentives to take imprudent risks that are not consistent with the long-term health of the organization. Refer to OCC Bulletin 2010-24, "Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies." To be consistent with safety and soundness, a bank's incentive compensation arrangements should comply with the following key principles:

- Provide employees incentives that appropriately balance risk and reward.
- Be compatible with effective controls and risk management.
- Be supported by strong corporate governance, including active and effective oversight by the organization's board of directors.

Banking organizations should regularly review their incentive compensation arrangements for all executive and nonexecutive employees who, either individually or as part of a group, have the ability to expose the organization to material amounts of risk, as well as to regularly review the risk management, control, and corporate governance processes related to these arrangements. Banking organizations should immediately address any identified deficiencies in these arrangements or any processes that are inconsistent with safety and soundness.

Restrictions on Incentive Compensation and Referral Fees for Bank Employees—GLBA Networking Arrangement Exception and Regulation R

The GLBA networking exception provides that a bank may not pay its employees who do not hold securities licenses incentive compensation for brokerage transactions. Nevertheless, the GLBA networking exception permits a bank employee to receive a "nominal one-time cash fee of a fixed amount" for the referral of any customer to a broker-dealer if payment of the referral fee is not "contingent on whether the referral results in a transaction." Regulation R provides interpretation of the GLBA incentive compensation prohibition for brokerage transactions to bank employees that do not hold securities licenses.

It is important to recognize that neither the GLBA networking exception nor Regulation R addresses the type or amount of compensation that a bank (as compared with bank employees) may receive from its broker-dealer partner under the networking arrangement. To the extent an RNDIP arrangement is entered into between a bank and its affiliate, the terms and conditions need to satisfy the affiliate transaction requirements imposed by 12 USC 371c and 12 USC 371c-1.

The following discussion divides the requirements in Regulation R that address bank employee compensation into four parts:

1. Referral.
2. Nominal one-time cash fee of a fixed dollar amount.
3. Contingent on whether the referral results in a transaction.
4. Incentive compensation.

Part 1: Referral

Rule 700 of Regulation R defines "referral" to mean the action taken by one or more bank employees to direct a customer of the bank to a broker-dealer for the purchase or sale of securities for the customer's account. "Customer" includes both existing and potential customers of the bank.

The networking exception permits a bank employee who personally participated in a referral to receive a referral fee for the referral. A supervisory employee may receive a separate, nominal one-time cash fee for a referral made by another individual under the supervisory employee's supervision only if the supervisory employee personally participated in the referral. A supervisory employee may not receive a referral fee merely for supervising the employee making the referral or administering the referral process. An officer or director of a bank who makes or personally participates in making a referral may receive a nominal fee for the referral in his or her capacity as a bank employee.

Unregistered bank employees may perform only clerical or ministerial functions in connection with brokerage transactions. An unregistered bank employee is an employee who is not registered or approved, or otherwise required to be registered or approved, as a securities broker in accordance with FINRA's qualification standards. A bank employee who refers a customer to a broker-dealer under this exception may not provide investment advice concerning securities or make specific securities recommendations to the customer. A bank employee may, however, describe in general terms the types of investment vehicles available from the bank and the broker-dealer under the networking arrangement.

Part 2: Nominal One-Time Cash Fee of a Fixed Dollar Amount

Rule 700 of Regulation R defines "nominal one-time cash fee of a fixed dollar amount" to mean a cash payment for a referral, to a bank employee who was personally involved in referring the customer to the broker-dealer, in an amount that meets certain standards. Under this rule, banks are provided five detailed alternatives to establish that a referral fee is "nominal." A bank may use a different "nominal" methodology in its different business lines or operating units and may alter the methodology it uses within a given year. The referral fee payment cannot exceed the highest of

- twice the average of the minimum and maximum hourly wage established by the bank for the current or prior year for the job family that includes the employee.

- 1/1000th of the average of the minimum and maximum annual base salary established by the bank for the current or prior year for the job family that includes the employee.
- twice the employee's actual base hourly wage.
- 1/1000th of the employee's actual annual base salary.
- $25 (adjusted for inflation). The $25 flat fee was first adjusted for inflation on April 1, 2012, and is modified every five years going forward to reflect any changes in the value of the Employment Cost Index for Wages and Salaries, Private Industry Workers (or any successor index), as published by the Bureau of Labor Statistics.[51] Each adjustment would be rounded to the nearest multiple of $1. The current inflation-adjusted amount is $36 as of April 1, 2022.[52]

The referral fee may be paid for each referral the bank employee makes to a broker-dealer, including separate referrals of the same individual or entity, provided the compensation paid is "nominal" and meets the other requirements of the GLBA and Regulation R. The amount of compensation a bank employee may receive is small in relation to the employee's overall compensation, and therefore is unlikely to create undue incentives for the bank employee to engage in securities activities, such as "preselling" specific securities, that would violate the networking exception.

The GLBA and Regulation R do not limit or restrict the ability of a bank employee to refer customers to other bank departments or divisions, including the bank's trust, fiduciary, or custody department. Similarly, these GLBA and Regulation R requirements do not apply to referrals of retail, institutional, or HNW customers to a broker-dealer or other third party solely for transactions not involving securities, such as loans, futures contracts, foreign currency, or over-the-counter commodities. Nor do these requirements apply to transactions solely in exempt securities, such as U.S. government obligations that would not require the other party to register as a broker-dealer.

Referral fees may not be paid in noncash forms, such as vacation packages, stock grants, annual leave, or consumer goods. For example, a bank may not sponsor a "pizza party" for only those employees who have made one or more referrals to a broker-dealer. The bank may, however, provide bank employees noncash items, such as pizza or coffee mugs, in connection with programs to familiarize bank employees with new types of investment vehicles offered by the bank or the broker-dealer through the networking arrangement, provided these items are not compensation for referrals to the broker-dealer.

Referral fees may be paid in "cash cards," such as prepaid debit cards and prepaid gift cards, provided they are widely accepted by most third parties and treated essentially as cash. Cash cards that are not widely accepted by third parties or are limited to certain merchandise may not qualify as permissible cash payments.

[51] The U.S. Department of Labor's Bureau of Labor Statistics publishes the Employment Cost Index for wages and salaries, private industry workers.

[52] The nominal fee adjusted for inflation is not reported and must be calculated every five years. Refer to Regulation R for the calculation (17 CFR 247.700(f) or 12 CFR 218.700(f)).

A bank may pay a bank employee on a quarterly or more frequent basis the total amount of nominal, fixed cash fees the employee earned during the period. For example, if the bank employee is entitled to receive a $25 referral fee for each securities referral and the employee makes three qualifying referrals in a given quarter, the bank may pay the employee $75 at the end of the quarter instead of three individual payments of $25.

The bank may also use a "points" system to keep track of the number of qualifying securities referrals made by the employee during a quarterly or more frequent period and then use those points to determine the total amount of nominal, fixed cash fees that the employee is entitled to receive at the end of the period. In all cases, however, points must translate into cash payments on a uniform basis, and the cash amount that an employee receives for a qualifying securities referral must be fixed before the referral is made. Also, the payment may not be contingent or vary based on whether an employee makes a specified number or type of securities referrals during a quarterly or more frequent period. For example, a point system that "tiers" points is not permitted if it results in a bank employee receiving a higher payout per referral if a certain number of referrals are made.
The term "job family" used in the nominal referral fee definition means a group of jobs or positions involving similar responsibilities or requiring similar skills, education, or training that a bank, or a separate unit, branch, or department of a bank, has established and uses in the ordinary course of its business to distinguish among its employees for purposes of hiring, promotion, and compensation. The bank may not deviate from its ordinary classification of jobs for purposes of determining whether a referral fee is nominal under this standard. Depending on the bank's internal employee classification system, possible examples of a job family may include tellers, loan officers, and branch managers.

Bonuses should not be included in determining an employee's hourly wage or annual salary. Bonuses are typically discretionary, vary significantly from year to year, and may constitute a significant portion of the compensation of certain types of bank employees in particular years. Permitting referral fees to be based in part on the size of a bonus paid in a previous year (or projected to be paid in the current year) could allow bank employees to receive a referral fee that is not nominal.

Part 3: Contingent on Whether the Referral Results in a Transaction

Rule 700 of Regulation R defines "contingent on whether the referral results in a transaction" to mean the bank is prohibited from conditioning the payment of referral fees that are dependent on whether the referral results in

- a purchase or sale of a security;
- an account being opened with a broker-dealer;
- a transaction involving a particular type of security; or
- multiple securities transactions.

A referral fee may be **conditioned** on whether a customer

- contacts or keeps an appointment with a broker-dealer as a result of the referral, or

- meets any objective, baseline qualification criteria established by the bank or broker-dealer for customer referrals, including such criteria as minimum assets, net worth, income, marginal federal or state income tax rate, or any requirement for citizenship or residency.

A bank or broker-dealer may establish and use different objective, baseline qualification criteria (including citizenship or residency requirements) for different classes of customers or for different business lines, divisions, or units of the bank or broker-dealer. In addition, other contingencies not specified in the rule may be permissible if they are not based on whether the referral results in a securities transaction at the broker-dealer.

Part 4: Incentive Compensation

The networking exception prohibits an unregistered bank employee who refers a customer to a broker-dealer from receiving "incentive compensation" for the referral or any securities transaction conducted by the customer at the broker-dealer other than a nominal, nontransaction-contingent referral fee. Incentive compensation means compensation intended to encourage a bank employee to refer customers to a broker-dealer or give a bank employee an interest in the success of a securities transaction at a broker-dealer.

Rule 700(b) of Regulation R defines impermissible incentive compensation and provides guidance on certain types of bonus compensation plans that are excluded from this incentive compensation definition. Such plans are not likely to give unregistered bank employees a promotional interest in the brokerage services offered by a broker-dealer under a networking arrangement. This guidance establishes "safe harbor" provisions for banks to use in structuring bonus plans. A bank's bonus program may take account of the full range of banking, securities, or other business of customers brought to the bank and its networking broker-dealer by a bank employee provided the bonus program satisfies the requirements for exclusion from "incentive compensation."

Banks traditionally provide bank employees with bonus or incentive compensation plans that provide additional compensation outside of the employees' normal salary if certain requirements are met. The networking exception prohibitions on incentive compensation apply to plans covering bank employees who are not also licensed broker-dealers. Banks should identify which plans apply to bankers only and then evaluate these bonus plans to determine whether they have components that may constitute impermissible incentive compensation. Plan designs should be transparent to demonstrate compliance with the requirements.

Bankers' bonus or incentive compensation plans that in any way include factors related to a broker-dealer under an RNDIP sales program should be evaluated to determine compliance with Regulation R. The bank should determine whether it has procedures in place to test whether the bonus or incentive compensation plan meets the safe harbor tests under Rule 700(b)(1) and (2) of Regulation R.

Rule 700(b)(1) of Regulation R establishes a safe harbor for bank employee bonus or incentive compensation plans that meet the following discretionary, multifactor test. Incentive compensation limits do not preclude the bank from paying compensation under a bonus or similar plan that is

- paid on a discretionary basis.
- based on multiple factors or variables, and
  - includes significant factors or variables that are not related to securities transactions at the broker-dealer.
  - a referral made by the employee is not a factor or variable in determining the employee's compensation under the plan.
  - the employee's compensation under the plan is not determined by reference to referrals made by any other person.

Rule 700(b)(2) of Regulation R establishes an overall profitability or revenue safe harbor test that provides further guidance on permissible plans for bank employees. This section provides that incentive compensation limits do not prevent a bank from compensating an officer, director, or employee under a bonus or similar plan on the basis of any measure of the overall profitability or revenue of

- the bank on either a stand-alone or consolidated basis.
- any of the bank's affiliates (other than a broker-dealer) or any operating unit of the bank or the bank's affiliate (other than a broker-dealer) if the affiliate or operating unit does not over time predominately engage in the business of making referrals to a broker-dealer; or
- a broker-dealer if
  - such measure of overall profitability or revenue is only one of multiple factors or variables used to determine the compensation of the officer, director, or employee.
  - the factors or variables used to determine the compensation of the officer, director, or employee include multiple significant factors or variables that are not related to the profitability or revenue of the broker-dealer.
  - a referral made by the employee is not a factor or variable in determining the employee's compensation under the plan.
  - the employee's compensation under the plan is not determined by reference to referrals made by any other person.

A bonus or similar plan is considered "discretionary" if the amount an employee may receive under the plan is not fixed in advance and the employee does not have an enforceable right to payments under the plan until the amount of any payments are established and declared by the bank. A plan may, however, include targets or metrics that must be met for any bonus to be paid, provided the plan is otherwise a discretionary plan.

Each factor or variable unrelated to securities transactions at the broker-dealer is considered "significant" if it plays a material role in determining an employee's compensation under the bonus or similar plan. For example, a bonus plan structured so that the amount of the employee's bonus could be reduced or increased by a material amount based on the

nonsecurities factor or variable would not be considered incentive compensation if other requirements are met.

Safe harbor provisions establish that referral payments are not a factor or variable in a bonus plan. This means that the employee's compensation under the bonus or similar plan may not vary based on (1) the fact that the employee or other person made a referral to a broker-dealer, or (2) the number of securities referrals to a broker-dealer. To assess compliance with Regulation R, a bank should structure any bonus plan it offers so that the bonus plan is clearly separate and distinct from any referral fee payment plan that rewards bank employees for referrals to broker-dealers.

The rule is designed to accommodate discretionary bank bonus programs that are based on general measures of the business or performance of a bank or a particular customer, branch, or other unit of the bank, that are not based on referrals made by one or more bank employees, and that include some inputs based on securities transactions at a broker-dealer as well as multiple significant factors or variables that are unrelated to securities transactions at the broker-dealer. A bank may not establish or maintain one or more "sham" nonsecurities factors or variables in its bonus or similar plan for the purpose of evading the restrictions.

An examiner who is assessing a bank's bonus or similar plan and determining if the plan meets the requirements to contain sufficient banking or other factors unrelated to securities transactions at a broker-dealer needs to consider

- whether such factors or variables related to banking or other non-broker-dealer businesses are actually being conducted by the bank or its employees.
- the resources devoted by the bank to such businesses.
- whether such businesses materially contribute to the payments made under the plan over time.

It is not expected that the actual payments made under the bank's bonus or similar plan would, over time, be based predominately on securities transactions conducted at a broker-dealer. If such a situation were to occur, the bank should make appropriate modifications to its bonus or similar plan going forward.
Bonus programs that are based on overall profitability or revenue of a bank, qualifying affiliate, or operating unit are permitted subject to conditions that limit a bank employee's payments to prevent an undue promotional interest in any securities transactions that may occur at the broker-dealer as a result of a referral. Plans may be based on an entity's earnings per share or stock price, both of which are directly related to the entity's overall profitability or revenue. Plans that are based on other more granular measures of an entity's financial performance are analyzed using the multifactor, discretionary criteria.

The potential connection between a referral made by a bank employee and the payments made to the employee under a bonus plan may be particularly strong if payments under the plan are based on the profitability or revenue of (1) a partner broker-dealer or a specific branch or operating unit of the broker-dealer or (2) an operating unit of the bank or a non-broker-dealer affiliate that is predominately engaged in referring customers to the broker-

dealer. A bonus plan that is based on the overall profitability or revenue of a broker-dealer is permitted only if the program meets all four requirements specified previously. These requirements are designed to determine whether the profitability or revenue of a broker-dealer is only one of multiple significant factors or variables in determining a bank employee's compensation and that a referral or referrals made by a bank employee is not a factor or variable under the program. The bonus plan may not be based on the profitability or revenue of a particular branch, division, or operating unit of a partner broker-dealer.

A bonus plan may not be based on the overall profitability or revenue of a bank unit that is solely or predominately focused on making referrals to a broker-dealer. This restriction, however, is not intended to prevent a bonus plan from being based on the overall profitability or revenue of a bank unit, such as a call center, that in fact markets, sells, or supports a range of banking products in addition to making referrals to a broker-dealer. This is with the condition that over time, this banking unit does not predominately engage in the business of making referrals to a broker-dealer.

Regulation R Rule 700 essentially establishes a three-step process for examiners and bankers to consider when analyzing bonus plans.

- **First**, consider whether payments under the bonus plan are based in any way on the success (including revenues) of securities transactions conducted at a broker-dealer or referrals to a broker-dealer.
  - If not, payments under the plan would not be considered incentive compensation and no further analysis is required.
  - If yes, proceed to the second step.

- **Second**, if the bonus plan includes inputs from the broker-dealer, or that are related to referrals to the broker-dealer, consider whether payments under the bonus plan are based on the overall profitability or revenue of the bank or any of its affiliates or operating units other than
  - a broker-dealer, or
  - an affiliate or operating unit that over time is predominately engaged in the business of making referrals to a broker-dealer.
    - If yes, payments under the plan would not be considered incentive compensation and no further analysis is required.
    - If not, proceed to the third step.

- **Third**, if the bonus plan does not meet the standards in the first and second steps, then the plan needs to meet the following requirements to not be considered impermissible incentive compensation. Payments under the plan must be
  - paid on a discretionary basis, and
  - based on multiple factors or variables, and
    - include significant factors or variables that are not related to securities transactions at the broker-dealer;
    - a referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and

- the employee's compensation under the plan is not determined by reference to referrals made by any other person.

Banks should establish an ongoing system to determine whether broker-dealer related referral fee programs and bankers' bonus plans comply with the GLBA and Regulation R requirements. At a minimum, individuals with expertise regarding these regulatory requirements should review existing, revised, and proposed referral and bonus plans. An effective review process may entail human resources, compliance, legal, and the business line responsible for the RNDIP sales program. Some banks establish a formal compensation committee that is charged with reviewing and approving all bank employee-related incentive programs before adoption to determine compliance. Banks should tailor an effective review process commensurate with the complexity of the bank's referral and bonus compensation programs.

Exemption From the Definition of "Broker" for Certain Institutional Referrals—Rule 701

Regulation R provides a conditional exemption for banks from the compensation limits of the networking exception, provided all other GLBA networking exception conditions are met. This exemption permits banks to pay bank employees higher than nominal and transaction contingent referral fees for referrals of HNW or institutional customers to broker-dealers. Customers that meet these investor standards are believed to have the ability to understand and evaluate the financial interest of the bank employee making a referral. For more information, refer to appendix C of this booklet.

If an unlicensed bank employee receives a nominal, noncontingent referral fee for referrals of HNW or institutional customers (as defined in Rule 701), the requirements of Rule 700 must be met. Banks need not follow the conditions of Rule 701 if an employee receives a nominal referral fee regardless of whether the referred customer is an HNW or institutional customer.

Other Services Provided

Margin Lending and Related Securities Lending

Banks' RNDIP sales programs may directly, or more commonly through the broker-dealer, extend credit to certain customers for the purchase or carrying of securities. This arrangement is called "margin lending" when a customer uses leverage to enhance investment returns. Margin credit, however, may not be suitable or in the best interest of all customers due to the associated risks and requirements with having margin in an account. Banks and their networking broker-dealers should determine whether customers understand that while leverage may enhance investment returns, it has the potential to magnify investment losses due to adverse market movements.

A bank should determine whether customers have the opportunity to elect to decline margin credit when opening a brokerage account. While the industry practice is for a broker-dealer to require customers that do not opt out of margin credit to open a margin account, the bank should carefully consider whether this opt out arrangement is appropriate for its customers.

This is particularly important with less sophisticated customers who may not fully understand the risks margin credit may pose to their investments. Customers who fail to opt out are required by the broker-dealer to sign a margin agreement that requires them to post initial margin interest and maintain sufficient collateral coverage when credit is provided. A bank that elects to allow a broker-dealer to impose this obligation on the bank's customers should determine whether customer disclosures are provided by the broker-dealer that inform the bank's customers about their margin credit responsibilities and the possibility the broker-dealer will automatically sell out the customer's positions to cover any margin debits.

A bank that extends margin credit or uses broker-dealers that provide such leverage should determine whether the appropriate policies and procedures are being implemented to comport with regulatory requirements and effective risk management. Margin lending policies and procedures may include, for example

- complying with the margin lending regulation requirements that include 12 CFR 221, "Credit by Banks and Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock (Regulation U)," for banks and 12 CFR 220, "Credit by Brokers and Dealers (Regulation T)," for broker-dealers.
- complying with 12 CFR 215, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O)," extension of credit limitations that apply to margin credit provided to the bank's insiders as defined in this regulation.
- determining the types of accounts, collateral, securities, and customers that are eligible for margin and those that are ineligible.
- implementing effective systems for setting initial margin and maintenance requirements.
  - Margin setting at a minimum should meet the requirements in Regulation U or Regulation T (as applicable).
  - Consideration should also be given to setting higher margin requirements on securities with less liquidity, greater price variability, and issues in certain sectors, and on customers holding concentrated positions.
  - Intraday monitoring of collateral coverage should be instituted to reduce losses, particularly during periods of high volatility.
- evaluating the creditworthiness of the customer and counterparties.
- obtaining proper collateral assignments to secure the bank's or broker-dealer's claims.
- establishing effective surveillance, margin metrics, MIS, and risk controls associated with margin lending.
- implementing appropriate compliance, risk management, and internal audit programs that cover margin activities.

Retail brokerage account agreements commonly have provisions that allow a broker-dealer to use a customer's securities for lending if the customer uses margin credit. Typically, retail brokerage customers' accounts that do not use margin accounts but instead have cash accounts holding fully paid securities are segregated by the broker-dealer and are not used for securities lending. Brokers commonly use securities lending earnings to finance margin lending. To a limited extent, retail brokers may allow certain customers to participate in a securities lending program for purposes of facilitating securities settlements or short-selling strategies. Generally, the broker-dealer is the principal on the securities lending trades with the retail customers and borrows or lends the securities out to selected counterparties.

Appropriate counterparty credit risk management and collateral haircut requirements should be implemented. A bank overseeing RNDIP arrangements in which securities lending activity is conducted should look to the standards established in OCC Banking Circular 196, "Securities Lending," that apply to bank securities lending activities.

Examiners should investigate the potential for free riding in bank custody accounts. Free riding, also known as day trading, is the practice of buying and selling securities, usually on the same day, with the intention of paying for the purchase from the proceeds of the sale. The person doing the trading sets up a custody account at a bank and advises the broker that payments for trades are made through the custody account. The free rider generally has little or no money at risk. If the money is not in the account when the securities are delivered in a delivery versus payment transaction, the bank that completes the transaction creates a temporary overdraft and an extension of credit that is subject to the margin requirements in Regulation U (12 CFR 221). Free-riding schemes frequently involve initial public offerings.

Risks from free riding include (1) enforcement actions for violation of Regulation U or for aiding and abetting violations of Regulation X (12 CFR 224, "Borrowers of Securities Credit") or Regulation T (12 CFR 220), and (2) the loss of bank funds needed to complete the trades of customers who fail to pay. Regulation X requires that borrowers of securities credit obtained within or outside the United States comply with the limitations in Regulation U or Regulation T. Banks should determine whether procedures set standards for accepting new accounts, require identification and tracking of broker-dealers involved in the transactions, disaffirm customer trades in violation of Regulation U, and determine funds are available or require collateral for margin credit if issued. Credit lines should be considered for any account that engages in this activity. FSAs should also address the free-riding concerns described previously.

Examiners should determine whether those banks and their networking broker-dealers that engage in margin lending and securities lending conduct such activities in a safe and sound manner and provide appropriate consumer protections. For more information on margin lending, refer to appendix F of this booklet.

Swaps and Foreign Exchange Derivatives

A limited number of banks may directly provide off-exchange swaps and foreign exchange transactions.[53] These are not common offerings in banks' RNDIP sales programs. Such offerings are generally conducted away from banks' routine deposit-taking areas. Banks may offer these products to their HNW customers who are typically serviced in the banks' private banking or wealth management businesses.

The Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd–Frank) amended the Commodity Exchange Act of 1936 (CEA) to prohibit retail customers from

[53] A national bank may engage in certain derivative activities in compliance with 12 CFR 7.1030 and may engage in retail foreign exchange transactions in compliance with 12 CFR 48. An FSA may engage in certain financial derivative transactions in compliance with 12 CFR 163.172 and may engage in retail foreign exchange transactions in compliance with 12 CFR 48.

entering into off-exchange commodity swaps. While this prohibition does not apply directly to banks, banks should nonetheless be mindful of the prohibition because the CEA imposes liability for aiding and abetting violations of the CEA. A retail customer under the CEA generally means a person who is not an "eligible contract participant" (ECP). That term is the subject of a CFTC rule as well as numerous interpretations and no-action letters; as a general matter, the term means an institutional investor or an individual with discretionary investments of $10 million or more. Moreover, the CEA defines "swap" expansively to include products that have other names, like options and nondeliverable forwards.

The CFTC's comprehensive business conduct requirements pursuant to 17 CFR 23, "Swap Dealers and Major Swap Participants," apply to swap dealers and major swap participants. Swap dealing is predominantly a large bank activity, but smaller banks are increasingly offering swaps to customers. CFTC's business conduct rules contain requirements related to risk management, recordkeeping, suitability, sales practices, and other matters. Security-based swap dealers and major security-based swap participants are subject to SEC regulation. Rules 15Fh-1 through 15Fh-6 and Rule 15Fk-1 implement the business conduct standards and chief compliance officer requirements for security-based swap dealers and major security-based swap participants as set forth in Title VII of Dodd-Frank.[54]

Dodd–Frank amendments to the CEA forbid banks from engaging in futures-like off-exchange transactions in foreign currency with retail customers (retail forex transactions), unless these transactions are conducted pursuant to an OCC rule that authorizes the transaction. In 2011, the OCC adopted final rules at 12 CFR 48, "Retail Foreign Exchange Transactions," that authorize banks and their operating subsidiaries to engage in this activity, subject to comprehensive and detailed requirements. Each bank that engages in or plans to conduct retail forex transactions must obtain a written supervisory nonobjection from the OCC. For more information on retail forex transaction requirements, refer to appendix G of this booklet and 12 CFR 48.

Retail forex transactions take a variety of forms, including futures, options, rolling spots, and similar leveraged, margined, or bank-financed transactions. The definition of retail forex transactions is complex, incorporating nuances from the CEA, CFTC regulations, CFTC precedent, and the Legal Certainty for Bank Products Act of 2000. Many banks did not initially consider that some of their established products were, in fact, retail forex transactions. Examiners should be mindful that even "sophisticated" customers, such as private banking customers, could be retail customers under the retail forex rule.

Dodd–Frank created significant legal risk for any bank that offers derivatives to individuals. Reducing this risk requires a robust process to ascertain whether each customer is an ECP. The bank should also retain qualified counsel to evaluate whether its transactions with retail customers take the form of swaps or retail forex transactions and whether the bank complies with CFTC and SEC business conduct rules. In light of the legal complexities in this area, examiners should direct questions to the OCC's Bank Advisory group in the Chief Counsel's Office.

[54] "Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants." Fed. Reg. 34-77617.

Examination Procedures

This booklet contains expanded procedures for examining specialized activities or specific products or services that warrant extra attention beyond the core assessment contained in the "Community Bank Supervision," "Federal Branches and Agencies Supervision," and "Large Bank Supervision" booklets of the *Comptroller's Handbook*. Examiners determine which expanded procedures to use, if any, during examination planning or after drawing preliminary conclusions during the core assessment.

Scope

These procedures are designed to help examiners tailor the examination to each bank that offers RNDIPs and determine the scope of the RNDIP sales program examination. This determination should consider work performed by internal and external auditors and other independent risk control functions, and by other examiners on related areas. Examiners need to perform only those objectives and steps that are relevant to the scope of the examination as determined by the objectives in this section. Seldom will every objective or step of the expanded procedures be necessary.

Objective: To determine the scope of the RNDIP sales program examination and identify examination objectives and activities necessary to meet the needs of the supervisory strategy for the bank.

1. Review the following sources of information and note any previously identified problems related to the RNDIP sales program that require follow-up:

   - Supervisory strategy.
   - The EIC's scope memorandum.
   - The OCC's supervisory information systems.
   - Previous reports of examination, supervisory letters, and work papers.
   - Internal and external audit reports and work papers.
   - Bank management's responses to previous reports of examination, supervisory letters, and audit reports.
   - Customer complaints and litigation. Examiners should review customer complaint data from the OCC's Customer Assistance Group, the bank, and the Consumer Financial Protection Bureau (when applicable). When possible, examiners should review and leverage complaint analysis already performed during the supervisory cycle to avoid duplication of effort.
   - Functional regulators' reviews and findings relevant to the bank's RNDIP sales program.
   - FINRA's BrokerCheck and the SEC Investment Adviser Public Disclosure website for regulatory actions, fines, etc., if these are not included in the bank's RNDIP assessment.

2. Obtain and review the bank's call report Schedule RI-Income Statement and the Uniform Bank Performance Report. Identify changes, trends in growth rates, revenue composition, revenue concentrations, and financial significance of the noninterest income derived from the bank's RNDIP sales program or other factors that may affect the risk profile of the bank.

3. Obtain and review policies, procedures, and reports bank management uses to supervise or oversee the RNDIP sales program, including internal risk assessments, RNDIP oversight committee minutes and reporting packages, and compliance reviews.

4. In discussions with bank management, determine whether there have been any significant changes (e.g., in policies, processes, management, control systems [including changes to the audit plan], products, services, volumes, markets, geographies, board and committee structures, third parties, and operating systems, etc.) since the prior examination of the RNDIP sales program.

5. Determine the various delivery channels the bank uses to offer RNDIPs, which may include bank direct securities activities and the use of an affiliated or unaffiliated third party (e.g., broker-dealer, insurance agency, or RIA).

6. Based on an analysis of information obtained in the previous steps, as well as input from the EIC, and consideration of functional regulation requirements, determine the scope and objectives of the RNDIP sales program examination. The main goals and objectives of the RNDIP sales program examination are to assess the

   - risks to the bank and its customers.
   - effectiveness of the bank's risk management system and RNDIP program oversight.
   - adequacy of the bank's compliance with applicable law and regulatory policy guidance.
   - adequacy of the bank's consumer protection of its customers.

7. Select from the following examination procedures the necessary steps to meet examination objectives and the supervisory strategy.

Quantity of Risk

Conclusion: The quantity of each associated risk is (low, moderate, or high).

Compliance Risk

Objective: To determine the quantity of compliance risk associated with the bank's RNDIP sales program.

1. Analyze the quantity of compliance risk. Consider in your analysis the

   - culture and demonstrated commitment to address the multifaceted and complex compliance requirements associated with the bank's RNDIP sales program.
   - scope and complexity of the RNDIP sales program, which includes evaluating distribution channels, the array of products and services, concentrations of products and product commissions, the size and geographic locations of the sales force, and the use of third parties.
   - adequacy and implementation of policies and procedures.
   - effectiveness of the bank's oversight of the RNDIP sales program.
   - violations or noncompliance with regulatory requirements.
   - suitability or best interest standard (as applicable) and any sales practices issues.
   - significance of customer complaints, litigation, and settlements.
   - use of dual employees with the bank and a broker-dealer.
   - effectiveness of the new product and service review and approval process.
   - distribution of proprietary products and relevance to total product sales.
   - compensation programs for bankers and broker-dealers that are associated with the RNDIP sales program.
   - customer disclosures, marketing, and advertising materials.
   - bank employee training programs.
   - findings from compliance function reviews and surveillance monitoring systems.
   - results from independent risk management.
   - conclusions and findings from internal audit.

2. Evaluate the functional regulators' coverage and findings relevant to the bank's RNDIP sales program. Also, consider publicly released statements by the functional regulators regarding their examination focus and areas of concern related to broker-dealers, insurance agents, and RIAs.

3. Assess the impact of external factors, including economic, industry, competitive, and market conditions.

4. Determine the bank's compliance with applicable legal and regulatory requirements. At a minimum, evaluate (as applicable) the bank's compliance with

- GLBA bank securities activities and Regulation R.
- safe and sound banking practices (refer to the Interagency Statement and OCC Bulletin 2023-17).
- consumer protections for bank sales of insurance and annuities (12 CFR 14).
- affiliate transaction requirements (12 USC 371c and 12 USC 371c-1).
- FSA restrictions on advertising that is inaccurate or misrepresents investments (12 CFR 163.27) and offers and sales of FSA or affiliated securities (12 CFR 163.76).

Operational Risk

Objective: To determine the quantity of operational risk associated with the RNDIP sales program.

1. Analyze the quantity of operational risk. Consider in your analysis the

   - size of the sales program and the volume of transactions.
   - any operational losses resulting from the RNDIP sales program.
   - control weaknesses identified by internal audit, risk management, or compliance.
   - reliance on manual (rather than automated) processes.
   - effectiveness of the bank's due diligence in selecting and monitoring the broker-dealer or other third parties used in the sales program.
   - adequacy of MIS.
   - effectiveness of model risk management.
   - business continuity and disaster recovery planning.
   - capacity to handle above average customer inquiries or trading levels.
   - hiring practices.
   - turnover in the RNDIP sales force.
   - controls over customer funds.
   - quality and independence of the risk control functions.

Strategic Risk

Objective: To determine the level of strategic risk associated with the RNDIP sales program.

1. Analyze the level of strategic risk. Consider in your analysis the

   - reasonableness of strategic goals and objectives for the RNDIP sales program.
   - management's implementation of the strategic plan.
   - board oversight of strategic initiatives.
   - financial significance to the bank's earnings and capital.
   - adequacy of the bank's oversight of the securities broker-dealers and other third parties used in the sales program.
   - effectiveness of the risk management structure over the RNDIP sales program.
   - adequacy of the new product and service review and approval processes.
   - effectiveness of the ongoing product and service due diligence processes.

- sufficiency of qualified management resources.
- adequacy of technology resources to effectively offer RNDIPs to customers.
- responsiveness of management to changes in the banking, retail brokerage, and operating environment.

~~Reputation Risk~~

~~**Objective**: To determine the level of reputation risk associated with the RNDIP sales program.~~

1. ~~Analyze the level of reputation risk. Consider in your analysis~~

   - ~~the bank's effectiveness in meeting customers' needs and objectives with the RNDIP sales program.~~
   - ~~the ethical culture and internal control environment.~~
   - ~~violations of applicable law, regulatory enforcement action, litigation, and settlements.~~
   - ~~negative publicity.~~
   - ~~customer complaints.~~
   - ~~conflicts of interest and self-dealing.~~
   - ~~sales practices in general with particular emphasis on the treatment of senior clients, lower-income customers, and practices that may not meet best interest requirements, as applicable.~~
   - ~~supervision of bank direct RNDIP sales activities.~~
   - ~~effectiveness of overseeing the broker-dealer third parties.~~
   - ~~product and service due diligence.~~
   - ~~offerings of higher risk, high commissions, and complex product offerings.~~
   - ~~offerings of proprietary products and services or the use of branding techniques that involve the bank's name or logo.~~
   - ~~controls and training of the sales force that mitigate customer confusion about the risks associated with RNDIPs.~~
   - ~~supervision and training of bank employees engaged in direct bank RNDIP activities or in providing referrals to the broker-dealer third party.~~
   - ~~compensation programs for banks and sales representatives.~~
   - ~~the quality customer service.~~
   - ~~reasonableness of identifying and remediating customer harm.~~

Credit Risk

Objective: To determine the quantity of credit risk associated with the RNDIP sales program.

1. Analyze the quantity of credit risk that exists when a bank engages in margin lending, securities lending, free riding, off-exchange swaps, and retail foreign exchange transactions with customers in the RNDIP sales program. Consider in your analysis

- the volume of such transactions and trend of losses.
- credit risk management practices.
- margin and securities lending risk management.
- counterparty credit risk management.
- collateral risk management.

Quality of Risk Management

Conclusion: The quality of risk management is (strong, satisfactory, insufficient, or weak).

The conclusion on risk management considers all risks associated with the RNDIP sales program.

Policies

Policies are statements of actions adopted by a bank to pursue certain objectives. Policies guide decisions, often set standards (on risk tolerances, for example), and should be consistent with the bank's underlying mission, risk appetite, and core values. Policies should be reviewed periodically for effectiveness and approved by the board of directors or designated board committee.

Objective: To determine whether the board has adopted effective policies that are consistent with safe and sound banking practices and appropriate to the size, nature, and scope of the bank's RNDIP sales program.

1. Determine whether the bank's board of directors effectively established the risk appetite, strategic goals, and objectives of the bank's RNDIP sales program.

2. Evaluate whether the bank's board of directors has provided the necessary managerial, financial, technological, and organizational resources to achieve the strategic goals and objectives.

3. Evaluate whether the bank's board of directors adopted a written program management statement that at a minimum

    - addresses the risks associated with the sales program.
    - describes the features and scope of the RNDIP sales program, including the types of products offered.
    - contains a summary of policies and procedures outlining the features of the bank's program and addressing the concerns described in the Interagency Statement.
    - addresses the scope of activities of any third party involved.
    - describes the roles of bank employees and supervisory personnel, including the functions of the compliance and audit departments.
    - describes the communication with the customer and use of customer information.
    - describes the bank's procedures for monitoring compliance with its RNDIP policies and procedures and the broker-dealer's compliance with the terms of the agreement between the bank and the broker-dealer.

4. Determine whether the bank's board of directors or a board-designated committee reviews and reaffirms the written program management statement at least annually or more frequently if warranted.

5. Evaluate relevant written policies to determine whether they provide appropriate guidance for managing the bank's RNDIP sales program and are consistent with the bank's mission, values, and principles. At a minimum, the bank's policies typically include

   - program objectives and the strategies employed to achieve objectives.
   - compliance policies and procedures that comply with the relevant GLBA exceptions and Regulation R exemptions, and other applicable laws and regulations, and that are consistent with safe and sound risk management standards (refer to the guidelines outlined in the Interagency Statement).
   - supervision of personnel involved in the RNDIP sales programs.
   - supervisory responsibilities of third parties who are selling on bank premises.
   - supervisory systems addressing dual employee arrangements.
   - the designation of employees authorized to sell investment products.
   - selection and ongoing due diligence of the offered RNDIP products and services.
   - compensation programs.
   - communication with customers.
   - permissible uses of bank customer information.
   - model risk management.
   - compliance program.
   - operational and fraud risk management.
   - independent risk management program.
   - internal audit program.

6. If the bank's RNDIP sales program includes the offering of insurance, annuities, financial planning, investment advice, margin lending, aggregation services, or retail foreign exchange transactions, evaluate the written policies to assess whether applicable regulatory requirements are sufficiently addressed.

Processes

Processes are the procedures, programs, and practices that impose order on a bank's pursuit of its objectives. Processes define how daily activities are carried out and help manage risk. Effective processes are consistent with the underlying policies and are governed by appropriate checks and balances (such as internal controls).

Objective: To determine whether the bank has effective processes in place commensurate with the nature, scope, complexity, and risks associated with the RNDIP sales program.

1. Evaluate whether processes are effective, consistent with underlying policies, and effectively communicated to appropriate staff. Consider

- whether the board of directors has clearly communicated objectives and risk limits for the RNDIP sales program to management and staff.
- whether communication to key personnel within the RNDIP sales program is timely.

2. Determine whether appropriate internal controls are in place and functioning as designed. Complete the Internal Control Questionnaire (ICQ) in this booklet, if necessary, to make this determination. Consider

   - the nature, scope, complexity, and risks of the bank's RNDIP sales activities.
   - the size and financial condition of the bank.
   - relevance of the RNDIP sales activities to the bank's strategic plan, earnings, and capital.
   - the quality of management and internal controls.
   - the expertise, sufficiency, and stability of the RNDIP sales program management and sales force.
   - market conditions.
   - identified deficiencies.

3. Determine the effectiveness of the processes implemented to assess the bank's RNDIP securities activities comply with the GLBA (as amended by Dodd–Frank) and Regulation R requirements as well as the maintenance of records to demonstrate compliance. Consider whether the bank has implemented processes that, as applicable

   - include all affected bank units in the planning and implementation processes, such as the various impacted business lines: human resources, legal, compliance, internal audit, risk management, finance, operations, and marketing.
   - consider the nature of the activities and revenues generated.
   - analyze bank and employee compensation related to securities activities.
   - determine which GLBA exception or Regulation R exemption is used for preserving the bank's securities activities.
   - determine whether certain accounts or business lines need to be re-priced, restructured, or pushed out to a broker or dealer.
   - review customer disclosures.
   - review advertising policies and procedures.
   - review securities trade order handling.
   - develop business line policies and procedures.
   - make necessary programming changes to affected systems.
   - develop risk control programs that include compliance, risk management, and internal audit functions to assess ongoing monitoring and testing.
   - develop recordkeeping systems to demonstrate compliance.
   - provide bank employee training.
   - incorporate the GLBA and Regulation R requirements in the bank's review and approval processes as appropriate that may include new products and services, marketing materials, customer disclosures, and employee compensation.

4. Determine the effectiveness of the **program management** processes. Review

    - whether the board designated a director, bank officer, employee, or committee qualified and responsible for supervising the bank direct RNDIP sales activities and for overseeing the third parties used in the sales program.
    - whether the board-appointed designee is keeping the board adequately informed about RNDIP sales program decision-making, risks, and risk management.
    - whether the program is operating within the board's established risk appetite.
    - reports furnished to senior management and the board of directors to determine whether the reports are sufficiently timely, accurate, and meaningful to permit effective oversight.
    - if the bank uses an RNDIP oversight committee, determine whether this committee has implemented effective formalized governance and appropriate MIS.
    - effectiveness of the program management in ensuring the bank complies with the multiple regulatory requirements, including the GLBA title II specific requirements on banks' securities activities and antifraud provisions, and implements safe and sound banking practices (refer to the Interagency Statement for examples of safe and sound banking practices).
    - effectiveness of the bank's implementation of its self-regulatory policies and procedures by analyzing complaints, litigation, settlements, operating losses, regulatory actions, and identified deficiencies.
    - bank management's response to recommendations made during past examinations.
    - responses to the "Program Management" section of the ICQ.

5. Determine whether the bank implemented effective **third-party risk management** processes over the broker-dealers, insurance agents, or RIAs used in the RNDIP sales program. Refer to the Interagency Statement and OCC bulletins 2023-17 and 2017-7, "Third-Party Relationships: Supplemental Examination Procedures." Review the responses to the "Third-Party Risk Management" section of the ICQ. Consider the effectiveness of the bank's

    - initial risk assessment process (if starting an RNDIP sales program) before contracting with an affiliated or unaffiliated broker-dealer or other third party used in the sales program.
    - initial (if a new third party) and ongoing due diligence process when selecting or retaining an affiliated or unaffiliated broker-dealer (or other third party) for the bank's RNDIP sales program.
    - written agreement with the broker-dealer and any other third party used in the sales programs for provision of RNDIPs and related services in satisfying the requirements articulated in the GLBA networking exception and considering the guidelines and principles set forth in the Interagency Statement and OCC Bulletin 2023-17.
    - process to determine whether the third party complies with the terms of the written agreement.
    - reports bank management is receiving from the broker-dealer to fulfill the bank's oversight responsibilities.

- compliance with the statutory restrictions on bank transactions with affiliates (12 USC 371c and 12 USC 371c-1), if the bank uses an affiliate broker-dealer or other affiliates in the RNDIP sales program.

6. Determine the effectiveness of the bank's **product selection and ongoing due diligence processes** over the RNDIPs and services offered in the sales program. Refer to the Interagency Statement and OCC Bulletin 2017-43. Review and assess the effectiveness of

   - the due diligence process for selecting, retaining, and terminating products on the RNDIP sales platform.
   - any new, expanded, or modified product and service risk management process.
   - the bank's review of the broker-dealer's product selection and ongoing monitoring processes, if the bank relies on such, and whether the bank maintains (and exercises) veto power over product decisions.
   - the RNDIP platform in meeting the bank's strategic objectives, risk appetite, and customers' needs and the appropriateness of these offerings through the bank's distribution channel.
   - compliance with 12 CFR 163.76, which restricts offers and sales of debt or equity securities issued by an FSA or its affiliates at an office of the FSA.

7. Determine whether the bank's process for **using bank customer information** for any purpose in connection with the RNDIP sales program complies with applicable legal requirements (Regulation P and Regulation V). Review responses to the "Use of Customer Information" section of the ICQ.

8. Determine whether bank management has established effective controls and processes to distinguish retail deposit-taking activities from RNDIP sales. Consider how the various elements of the **setting and circumstances** may interact to influence the customers' perception. Review

   - compliance with the GLBA networking exception Regulation R and consistency with these regulatory requirements' disclosure mandates intended to minimize customer confusion (refer also to the examples in the Interagency Statement's discussion of setting and circumstances). Banks' RNDIP sales programs must
     - clearly identify the broker-dealer as the person performing the brokerage services.
     - occur in a clearly marked area that is, to the extent practical, physically separate from the routine deposit-taking activities of the bank.
     - limit bank employees to performing only clerical or ministerial functions in connection with brokerage transactions.
     - determine whether broker-dealer services are provided on a basis in which all customers that receive any services are fully disclosed to the broker-dealer.
     - determine whether the bank does not carry a securities account of the customer except as permitted under the GLBA trust/fiduciary or custody exceptions.
   - the process for managing dual employees of the bank and the broker-dealer.

- the process for limiting customer confusion when offering proprietary products or branded programs that use the bank's name, logo, or affiliated entities with names similar to the bank's.
- results from the bank's and compliance's branch inspection reviews.
- responses to the "Setting and Circumstances" section of the ICQ.

9. Determine the effectiveness of the bank's processes to ensure **customer disclosures and advertising** meet the GLBA, Regulation R, and other applicable legal requirements (refer also to the examples in the Interagency Statement's discussion of disclosure and advertising).

   Review

   - the effectiveness of the internal review process for vetting and approving all bank-related customer forms, advertisements, and marketing materials related to the RNDIP sales program.
   - a representative sample of customer disclosures, advertising, and promotional material responses to determine whether they
     - provide conspicuous and meaningful disclosures that alert customers about the nature and risks inherent in investing in RNDIPs.
     - comply with the GLBA exception and Regulation R networking exemption (or other relevant GLBA exception or Regulation R exemption) and advertising requirements.
     - comply with 12 CFR 328, which imposes restrictions on banks' use of "member of FDIC" or FDIC insurance coverage in advertisements related to RNDIPs.
     - comply with the antifraud provision that prohibits banks from providing materially misleading or inaccurate representations in connection with offers and sales of securities.
     - comply with 12 CFR 163.27 advertising restrictions, if an FSA.
     - comply with 12 CFR 328 and 12 CFR 360 disclosure requirements, if a deposit sweep account.
     - comply with 12 CFR 14 disclosure and advertising requirements, if an insurance or annuity product. For more information, refer to appendix E of this booklet.
   - responses to the "Disclosures and Advertising" section of the ICQ.

10. Assess the bank's processes for ensuring that bank supervisory, investment sales, compliance, risk management, and internal audit personnel are properly **qualified and adequately trained.** Review

    - hiring and training practices the bank implements that cover bank personnel authorized to recommend and sell RNDIPs directly or their supervisors to determine whether these individuals possess the necessary expertise and knowledge commensurate with the complexity and risks of the RNDIPs being offered. The hiring practices should include a background investigation that checks for possible actions by securities and other regulators if the employees have previous investment experience.

- training programs for bank employees that have contact with bank customers, such as tellers or call center employees, to determine whether these employees are making proper referrals and understand their limitations regarding the RNDIP sales program.
- qualifications and training of the bank's compliance, risk management, and internal audit personnel responsible for RNDIP sales program coverage.
- the broker-dealer's reports to the bank on the broker-dealer's hiring practices, changes in such practices, turnover and rationale for turnover, sales representatives licensing, registration, and training.
- use of various industry designations and credentials by bank direct sales personnel and broker-dealer sales representatives.
- responses to the "Qualifications and Training" section of the ICQ.

11. Assess the bank's processes for determining **suitable recommendations and proper sales practices** for either bank direct sales of RNDIPs **or compliance with Regulation Best Interest** when overseeing the broker-dealer's sales practices.

    Review

    - surveillance reports used by bank management to supervise bank direct activity.
    - broker-dealers' policies and procedures regarding conflicts of interest and compliance with Regulation Best Interest.
    - disclosure documents, as required under the Disclosure Obligation of Regulation Best Interest.
    - form CRS.
    - a risk-based sample of transactions conducted directly by the bank.
    - sales practice summary information received by the bank from the broker-dealer.
    - customer complaints, resolutions, litigation, and settlements.
    - compliance, risk management, and internal audit reports and working papers as needed.
    - functional regulators' findings relevant to the bank's RNDIP sales program.
    - responses to the "Suitability" or "Best Interest" section of the ICQ, as applicable.

12. Review the bank's **compensation** plans and referral fee programs that relate to the bank's RNDIP sales program and assess whether these programs satisfy the GLBA and Regulation R requirements (refer also to the examples in the Interagency Statement's discussion of compensation).

    Review

    - bank employee referral fee programs related to the RNDIP sales program.
    - bank employee bonus plans that contain factors or variables related to the RNDIP sales program.
    - compensation arrangements for the sales representatives and whether there are product differential payouts that could influence sales practices.

- any product or service promotions conducted that resulted in higher payouts to bankers or sales representatives.
- responses to the "Compensation" section of the ICQ.

13. Determine whether the bank's **networking arrangement** with the broker-dealer complies with the **GLBA networking exception and Regulation R** requirements that include the following conditions:

    - The broker is clearly identified as the provider of the brokerage services.
    - Brokerage services are performed in a clearly marked area, to the extent practical, physically separate from the routine deposit-taking area.
    - Advertising used by the bank clearly indicates the brokerage services are provided by the broker-dealer and not the bank.
    - Advertising used by the bank complies with federal securities laws.
    - Bank employees perform only clerical or ministerial functions in connection with brokerage transactions, such as scheduling appointments with brokerage firm associates. Bank employees may forward customer funds or securities and may describe in general terms the types of investment vehicles available under the networking arrangement.
    - Bank employees do not receive incentive compensation for any brokerage transaction, except they may receive compensation for the referral of any customer if the compensation is a nominal one-time cash fee of a fixed dollar amount and the payment of the fee is not contingent on whether the referral results in a transaction.
    - All customers that receive any broker-dealer services are fully disclosed to the broker-dealer.
    - The bank does not carry a securities account of the customer except as permitted under trust/fiduciary or custody exceptions.
    - The bank, broker, or dealer informs the customer that the brokerage services are provided by the broker or dealer and not by the bank, and that the securities are not deposits or other obligations of the bank, are not guaranteed by the bank, and are not insured by the FDIC.

14. Determine that the bank maintains adequate records to demonstrate compliance with the GLBA networking exception and related Regulation R exemption.

15. Determine whether the bank's program to **sweep deposit funds** into MMMFs and purchases and sales of MMMFs for customer accounts comply with the GLBA and Regulation R requirements.

    - If the bank offers a program for the investment or reinvestment of its own customers' deposit funds into any no-load,[55] open-end management investment company

[55] For purposes of this exception, no-load means the MMMFs shares are not subject to a sales load or deferred sales load; and total charges against average net assets for sales or sales promotions expenses, for personal service or maintenance of shareholder accounts, do not exceed 25 basis points. No-load does not include charges for certain services provided to MMMFs. See the "Sweep Accounts" topic under the heading "GLBA and Regulation R" within the "Examiner Risk Assessment" section of this booklet for more information.

registered under the Investment Company Act of 1940 that holds itself out as an MMMF, determine that these MMMFs are, in fact, described as no-load in the fund's prospectus.

- If the bank effects transactions on behalf of another bank as part of the other bank's sweep account program that involve no-load MMMFs or MMMFs with loads, determine whether
  - any MMMFs that the bank represents as no-load are, in fact, described as no-load in the fund prospectus; or
  - the bank or the other bank provides to each customer, before the customer authorizes the transaction, a prospectus for each MMMF that is a load fund, and that the bank does not represent funds other than no-load funds to be no-load funds.
- If the bank effects **individual transactions** (not a sweep program) in **no-load** or **load** MMMFs for its own customers, determine that the
  - bank provides to the customer another product that does not require the bank to register as a broker.
  - MMMFs that are not no-load funds are not labeled no-load.
  - the customer is provided with a fund prospectus before authorizing the transaction.
- If a customer's deposit funds are swept into a no-load MMMF and the bank is authorized under the terms of the sweep agreement to alter the specific fund into which the customer's balances are invested, determine that the bank provides the customer a prospectus for any MMMF that is not a no-load fund before the date on which the bank first invests the customer's balances in the fund.

16. Determine whether the bank maintains adequate records to demonstrate compliance with the GLBA deposit sweep exception and related Regulation R exemption.

17. If the bank relies on the de minimis exception for securities transactions the bank effects for RNDIP customers, determine that the de minimis transactions do not exceed 500 transactions of any type per calendar year, in addition to the securities transactions referred to in the other GLBA 201 exceptions. (Riskless principal transactions permitted under the Securities Exchange Act Rule 3a5-1 for bank's dealer activities are aggregated with the brokerage transactions to calculate the 500-transaction limit.)

18. Determine whether the bank maintains adequate records to demonstrate compliance with the requirements of the exception.

19. Determine whether processes are implemented that assess whether unlicensed bank employees who are not directly involved in the RNDIP sales program are effectively supervised, trained, and tested regarding what the bank employees may say and not say about investment products, and limit these employees' activities as required by the GLBA networking agreement exception.

20. Evaluate policies, procedures, and processes to determine whether they adequately address the requirements in 12 CFR 14 that cover the Consumer Protections for Depository Institution Sales of Insurance regulations.

    - Review samples of initial sales of insurance and annuities and credit applications when insurance or an annuity is solicited by the applicant, or offered or sold to the applicant by the bank or covered person (include sales made and loan applications received by telephone, mail, and electronic media), to determine whether
      – before completion of the initial sale, consumers received and acknowledged receipt of information disclosing the fact that the insurance or annuity
        - is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank.
        - is not insured by the FDIC or any other agency of the United States, or the bank or bank affiliate.
        - may involve investment risk, including the possible loss of value, if applicable.

    - Review samples to determine whether at the time the consumer applied for credit, the consumer received and acknowledged (at the time of application or at the time of the sale) receipt of information disclosing the fact that the bank may not condition a credit extension on
      – purchase of an insurance product or annuity from the bank or any of its affiliates.
      – an agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

    - Review advertisements and promotional materials for the sale of insurance and annuities to determine whether advertisements and promotional materials include the required disclosures, and whether these disclosures were conspicuous, simple, direct, readily understandable, designed to call attention to the nature and significance of the information provided, and provided in a meaningful form.

    - Consider findings based on the sample and advertisement reviews, an assessment of consumer complaint information, and audit findings, to determine whether the bank led the consumer to believe that
      – in obtaining a loan from the bank, the consumer must purchase insurance or an annuity from the bank or its affiliates, or the consumer must agree not to purchase insurance or an annuity from a nonaffiliate; or
      – the insurance product was backed by the federal government or bank, was insured by the FDIC, or when an investment risk existed, that the product did not involve an investment risk.

21. Determine whether the bank considered the status of the consumer as a victim of domestic violence, or as a provider of services to victims of domestic violence, as a criterion in any decision for insurance underwriting, pricing, renewal, scope of coverage, or payment of claims.

22. Through discussions with insurance sales personnel and a review of the bank's training program, determine whether sales personnel provide, and are trained to provide, disclosures orally and in writing before completion of the initial sale and at the time a consumer applies for credit (in connection with insurance and annuity solicitations, offerings, or sales).

23. Through discussions with management and on-site inspection, determine whether the bank physically segregates and identifies those areas within the bank where it conducts insurance and annuity transactions and where it conducts retail deposit-taking activities.

24. Review the bank's compensation program for insurance referrals and select a sample of employee compensation records (for employees who accept deposits from the public in an area where such transactions are routinely conducted in the bank and make referrals to others for the sale of insurance products or annuities). Verify that such employees receive no more than a one-time, nominal fee of a fixed dollar amount for each referral, and that payment of this fee does not depend on whether the referral results in a transaction.

25. Select a sample of persons who sell or offer for sale any insurance product or annuity in any part of the bank or on its behalf. Determine whether each person has always been qualified and licensed appropriately under applicable state insurance or securities licensing standards for the specific products that the person sells or recommends.

26. Evaluate the bank's **margin lending** processes to determine the effectiveness of managing the associated risks to the bank and its customers. Review

    - compliance with Regulation U.
    - compliance with Regulation O if margin credit is extended to bank insiders.
    - the process for determining types of accounts, collateral, securities, and customers eligible for margin credit.
    - systems for setting initial margin and maintenance requirements.
    - credit risk management over customers and counterparties.
    - the process for obtaining proper collateral assignments.
    - surveillance, metrics, and MIS results.
    - disclosures provided to customers.
    - free riding in customers' accounts and associated risk controls.
    - findings from risk control functions (compliance, internal audit, and independent risk management).

27. Evaluate the bank's **off-exchange swap and forex transaction** processes to determine the effectiveness of managing the associated risks to the bank and its customers. Review

    - the written supervisory nonobjection letter from the OCC that allows a bank to engage in retail forex transactions.
    - policies and procedures.
    - compliance with 12 CFR 48 that includes disclosures, recordkeeping, capital, margin, reporting, business conduct, and documentation requirements.

- customer due diligence processes.
- new product approval processes as applicable.
- margin risk management.
- identification and management of conflicts of interest.
- surveillance, metric, and MIS results.
- findings from risk control functions (compliance, internal audit, and independent risk management).

Personnel

Personnel are the bank staff and managers who execute or oversee processes. Personnel should be qualified and competent, have clearly defined responsibilities, and be held accountable for their actions. They should understand the bank's mission, risk appetite, core values, policies, and processes. Banks should design compensation programs to attract and retain personnel, align with strategy, and appropriately balance risk-taking and reward.

Objective: To determine management's ability to supervise the RNDIP sales program in a safe and sound manner.

1. Given the scope and complexity of the bank's RNDIP sales program, assess the management structure and staffing. Consider

   - the qualifications, experience, and tenure of senior management responsible for the RNDIP sales program.
   - written performance objectives and performance appraisals of key management personnel to determine whether objectives and appraisals incorporate compliance issues, particularly compliance with disclosure and consumer protection standards.
   - whether a bank engaged in direct sales of RNDIP properly designated the bank personnel and the specific products these employees are authorized to recommend and sell.
   - the expertise and training of staff members and the sufficiency of these resources.
   - whether reporting lines encourage open communication and limit the chances of conflicts of interest.
   - the level of staff turnover.
   - the use of outsourcing arrangements.
   - the capability to address identified deficiencies.
   - responsiveness to regulatory, accounting, industry, and technological changes.

2. Assess performance management and compensation programs. Consider whether these programs measure and reward performance that aligns with the bank's strategic objectives and risk appetite.

   If the bank offers incentive compensation programs, determine whether they are consistent with safe and sound risk management standards. Refer to OCC Bulletin 2010-24, including the bulletin's three key principles: (1) provide employees with

incentives that appropriately balance risk and reward; (2) be compatible with effective controls and risk management; and (3) be supported by strong corporate governance, including active and effective oversight by the bank's board of directors.

Control Systems

Control systems are the functions (such as internal and external audits and quality assurance) and information systems that bank managers use to measure performance, make decisions about risk, and assess the effectiveness of processes and personnel. Control functions should have clear reporting lines, adequate resources, and appropriate access and authority. MIS should provide timely, accurate, and relevant feedback.

Objective: To determine whether the bank has systems in place to provide accurate and timely assessments of the risks associated with its RNDIP sales program. Review responses to the "Compliance Program" section of the ICQ.

1. Assess the independence of the compliance, internal audit, and risk management functions responsible for reviewing the RNDIP sales program. Consider whether these control functions

    - determine the scope and frequency of their own RNDIP sales program reviews.
    - report their findings directly to the board or an appropriate committee of the board.
    - have their performance evaluated by persons independent of the RNDIP sales function.
    - receive compensation that in no way is connected to the success of RNDIP sales.

2. Assess the scope, frequency, and effectiveness of the bank's compliance program covering the RNDIP sales program. Consider

    - the frequency, scope, and depth of the compliance program.
    - the level and scope of testing performed.
    - the accuracy of compliance findings.
    - board and senior management information reports, escalation plans, and actions taken in response to deficiencies.
    - the quality of surveillance monitoring efforts.
    - the quality of compliance reports and supporting work papers.
    - the complaint analysis and handling process.
    - customer call-back programs, findings, and actions in response to deficiencies.
    - mystery shopping programs, findings, and actions in response to findings.
    - the adequacy of compliance staff's resources and expertise.
    - the effectiveness of compliance staff's ongoing training in products and consumer protection issues, regulatory requirements, and emerging issues.

3. Assess the scope, frequency, and effectiveness of the internal and external audit programs of the RNDIP sales program. Consider the

- frequency, scope, and depth of audits performed, including whether all significant activities and controls are covered.
- level and scope of testing performed.
- accuracy of audit findings.
- board and senior management information reports, escalation plans, and actions taken in response to deficiencies.
- quality of audit reports and supporting work papers.
- adequacy of the audit staff's resources and expertise.
- effectiveness of audit's ongoing training in products and consumer protection issues, regulatory requirements, and emerging issues.

4. Assess the effectiveness of the independent risk management function, if applicable, that covers the RNDIP sales program. Consider the

    - frequency, scope, and depth of the risk management function's coverage.
    - accuracy of risk identification.
    - board and senior management information reports, escalation plans, and actions taken in response to deficiencies.
    - quality of risk management reports and supporting analysis.
    - demonstration of credible challenge to business in mitigating risk.
    - adequacy of the risk management staff's resources and expertise.
    - effectiveness of the risk management staff's ongoing training in associated RNDIP existing and emerging risks.

5. Evaluate the effectiveness of monitoring systems to identify, measure, and track exceptions to policies and established limits. Consider the

    - quality and scope of surveillance monitoring efforts and findings.
    - quality and scope of exception tracking reports and findings.
    - accuracy of control risk assessments.
    - adequacy of KRI in identifying risks.

6. Determine whether MIS provide timely, accurate, and useful information to evaluate risk levels and trends in the bank's RNDIP sales program. Consider

    - the frequency and timeliness of information.
    - the integrity of the information.
    - information presented in meaningful and useful reports.
    - whether the analysis of information accurately identifies trends, outliers, and practices that indicate risk levels not consistent with the bank's risk appetite.

7. Evaluate the control functions' roles, responsibilities and authorities within the governance structures and processes responsible for the bank's RNDIP sales program. Consider the control functions' participation in relevant committees and processes such as

- RNDIP oversight.
- new product and service review and approval and adherence to the approved list of products.
- ongoing product due diligence.
- third-party risk management.
- marketing and advertising.
- bank employee compensation programs.
- bank employee training.

Conclusions

Conclusion: The aggregate level of each associated risk is (low, moderate, or high). The direction of each associated risk is (increasing, stable, or decreasing).

Objective: To determine, document, and communicate overall findings and conclusions regarding the examination of the RNDIP sales program.

1. Determine preliminary examination findings and conclusions and discuss these with the EIC, including

   - conclusions for quantity of associated risks.
   - conclusions for quality of risk management.
   - the aggregate level and direction of associated risks.
   - the overall risk in the RNDIP sales program.
   - violations of laws and regulations or deficient practices.

Summary of Risks Associated With Retail Nondeposit Investment Products

Risk category	Quantity of risk (Low, moderate, high)	Quality of risk management (Weak, insufficient, satisfactory, strong)	Aggregate level of risk (Low, moderate, high)	Direction of risk (Increasing, stable, decreasing)
Compliance				
Operational				
Strategic				
~~Reputation~~				
Credit				

2. If substantive safety and soundness concerns remain unresolved that may have a material adverse effect on the bank, further expand the scope of the examination by completing verification procedures.

3. Make an assessment on the bank's RNDIP program that addresses

   - risks to the bank and its customers.
   - effectiveness of the bank's risk management system and RNDIP oversight.
   - the bank's compliance with applicable laws and regulations and safe and sound banking practices.
   - adequacy of the bank's consumer protection of its customers.

4. Discuss examination findings with bank management, including violations, recommendations, and conclusions about risks and risk management practices. If necessary, obtain commitments for corrective action.

5. Compose conclusion comments, highlighting any issues that should be included in the ROE. If necessary, compose matters requiring attention and violation write-ups.

6. Update the OCC's information system and any applicable ROE schedules or tables.

7. Provide written recommendations specifically setting out what the OCC should do in the future to effectively supervise the bank's RNDIP sales program, including time periods, staffing, and workdays required.

8. Update, organize, and reference work papers in accordance with OCC policy.

9. Appropriately dispose of or secure any paper or electronic media that contain sensitive bank or customer information.

Internal Control Questionnaire

An ICQ helps an examiner assess a bank's internal controls for an area. ICQs typically address standard controls that provide day-to-day protection of bank assets and financial records. The examiner decides the extent to which it is necessary to complete or update ICQs during examination planning or after reviewing the findings and conclusions of the core assessment.

Program Management

1. For bank direct RNDIP sales activities, do written supervisory procedures assign a bank manager the responsibility for

   - reviewing and authorizing each sale?
   - accepting each new account?
   - reviewing and authorizing all sales or account-related correspondence with customers?
   - reviewing and authorizing all advertising and promotional materials before use?

2. Does the bank use written job descriptions to assign management responsibilities?

Third-Party Risk Management

3. Did the bank conduct a comprehensive initial risk assessment before contracting with a third party for setting up a sales program that identified at a minimum the following:

   - Role of the relationship given the bank's overall strategic plans and objectives and whether the third party's activities are clearly integrated with corporate strategic goals?
   - Risks associated with the third party's activities?
   - Performance criteria, internal controls, reporting needs, and contractual requirements?
   - Expertise needed to properly oversee and manage the activity?
   - Costs and benefits of such arrangements?
   - Anticipated customer expectations and understandings with the bank using a third party?

4. Is the bank's initial (if a new third party) and ongoing due diligence process when selecting or retaining an affiliated or unaffiliated broker-dealer (or other third party) for the bank's RNDIP sales program effective? Does the process include a written assessment addressing the

   - financial strength of the broker-dealer and its significant related organizations?
   - quality and experience of the broker-dealer management and sales representatives?
   - ~~reputation of the broker-dealer determined by contacting other banks with which the broker-dealer has done business and by researching public sources?~~

- complaints, litigation, settlements, and disciplinary history of the brokerage firm and its registered representatives?
- compliance with the written agreement between the bank and the broker-dealer?
- examination history and background of the broker-dealer and registered representatives through use of FINRA's BrokerCheck and the SEC's Investment Adviser Public Disclosure website depending on if they are dual employees of both a broker-dealer and RIA?
- product offerings and selection process?
- internal controls environment and audit coverage?
- adequacy of MIS provided to the bank for overseeing the sales program?
- capacity of the broker-dealer to handle unusual surges in redemptions, higher customer inquiries, emergency staffing, and problems with operational systems?
- business resumption, continuity, recovery, contingency plans, and technology recovery testing efforts?
- responsiveness of the broker-dealer to the bank's requests?
- performance of the broker-dealer in meeting the bank's strategic objectives, risk appetite, terms of the agreement, and customer expectations?
- financial strength, quality of services, ~~reputation,~~ and performance of any additional service providers used by the broker-dealer in providing the RNDIP sales program?

5. Does the bank's written agreement with the broker-dealer and any other third parties used in the sales programs for provision of RNDIPs and related services satisfy the requirements articulated in the GLBA and Regulation R networking exception, and reflect prudent third-party risk management, to

    - clearly identify the broker-dealer as the entity performing the brokerage service?
    - require compliance with the GLBA and Regulation R networking arrangement exception's marketing materials, customer disclosures, and location conditions of the service offerings?
    - describe the duties and responsibilities of each party?
    - describe the permissible activities of the broker-dealer and its registered representatives on bank premises?
    - contain terms as to the use of the bank's space, personnel, and equipment?
    - specify the costs and compensation terms between the broker-dealer and the bank?
    - state compensation arrangements for personnel of the bank and for registered representatives of the broker-dealer?
    - specify that the broker-dealer comply with all applicable law and regulations and are consistent with safe and sound banking practices (refer to the Interagency Statement), particularly with regard to customer disclosures?
    - authorize the bank to monitor the broker-dealer and periodically review and verify that the broker-dealer and its registered representatives are complying with the agreement?
    - authorize the bank and the OCC to have access to the records of the broker-dealer as necessary or appropriate to evaluate compliance?

- require the broker-dealer to indemnify the bank for potential liability resulting from actions of the broker-dealer with regard to the RNDIP sales program?
- provide for written employment contracts, satisfactory to the bank, for personnel that are dual employees of both the bank and the broker-dealer?
- state which RNDIPs or services registered representatives are permitted to sell to bank customers and any restrictions on sales methods targeting particular groups of bank customers?
- require compliance with 12 CFR 163.76, which restricts sales of FSA- and affiliate-issued securities on an FSA's premise?
- provide for restrictions on the use of customer financial information?
- require the broker-dealer to implement an effective BSA/AML program?
- establish performance measures or benchmarks that define the expectations and responsibilities for the bank and the broker-dealer?
- identify the type, scope, and frequency of information, including customer complaints, litigation, and settlements, that the broker-dealer is to furnish bank management with to fulfill the bank's third-party oversight responsibilities?
- set forth the training that the bank expects its employees and broker-dealer personnel to possess?
- provide for business resumption and contingency plans addressing operational and service continuity?
- require the broker-dealer to maintain adequate insurance and notify the bank of material changes to coverage?
- address dispute resolution, limits on liabilities, default, and termination of agreement?

6. Do reports furnished by the third party include, as applicable

   - sales reports by product, region, and sales representative during a reporting period, and associated trend analysis?
   - identification of significant or unusual sales activities?
   - sales promotions?
   - account openings and closings by type, region, and sales representative during a reporting period, and associated trend analysis?
   - product and service additions and terminations?
   - listing, trend analysis, and resolution of customer complaints, litigation, and settlements?
   - summaries of surveillance efforts that include identification of issues, policy exceptions, and the broker-dealer's actions to resolve?
   - broker-dealer sales force turnover, new hires, voluntary exits, and terminations?
   - reasons for terminations of sales force?
   - hiring practices and any changes to such?
   - summary of regulatory reviews and findings that relate to the sales program?
   - compliance reviews, targets, and findings?
   - results from branch inspections?
   - mystery shopping and call-back program findings?
   - training provided to sales representatives and to bankers?

- internal audit coverage and findings?
- revenues and costs derived from the program?

7. Are reports furnished by a third party

   - prepared by someone independent of the third party's sales force?
   - timely and sufficiently detailed?

8. Does bank management require the broker-dealer to provide notification of business disruptions, cyberattacks, fraud discoveries, breach of customer privacy, and other significant events as stipulated in the networking agreement and in conformance with regulatory requirements? Inquire if any instances of these have occurred.

9. Does bank management assess whether the broker-dealer implements heightened investor protections for recommending and selling RNDIPs to senior clients? If so, what are these procedures?

10. If the bank uses an affiliate broker-dealer or other affiliates in the RNDIP sales program, is this arrangement formal with terms and conditions that are on an arms-length basis and reflect the fair market value of a similar agreement with an unaffiliated entity?

11. Does the bank effectively monitor ongoing compliance with the requirements in the written agreement and applicable laws and regulations, and demonstrate such monitoring through written analysis?

Product Selection

12. Do the RNDIP due diligence processes the bank uses, including those provided by a third party, consider the following factors, as applicable:

    - Performance over various time frames?
    - Performance relative to a benchmark or absolute measure?
    - Volatility of returns and prices?
    - Performance and risk attribution analysis?
    - Portfolio turnover?
    - Concentrated positions?
    - Adherence to the approved list of products?
    - Style analysis, including evaluating any style drift?
    - Liquidity of holdings?
    - Redemption rights and restrictions?
    - Fees and expenses?
    - Tax efficiency?
    - Financial strength of the product provider and guarantor?
    - Investment management firm, portfolio manager and team stability, tenure, experience, continuity, ~~reputation,~~ and responsiveness?

- Operational controls?
- Fraud controls?
- Conflicts of interest?
- Product complexity?
- Product usage?
- Targeted customer base and identification of customer profiles for whom the product is not suitable or in the best interest of retail customers, as applicable?

13. If the product selection analysis is performed by another party, such as the broker-dealer, does bank management understand and agree with the methodology?

14. If the bank uses an outside consultant to help select products, does bank management determine whether the consultant receives compensation from product issuers or wholesalers?

15. Does the bank conduct continuing reviews of product offerings to assure that they remain acceptable and are such reviews done at least annually?

16. If the bank uses a new product review committee or an ongoing product due diligence committee, is this governance properly formalized, consisting of appropriate membership, with established charters, membership, voting authority, quorums, agendas, reporting requirements, and well-documented minutes that capture decision-making?

Use of Customer Information

17. Do written policies and procedures concerning the use of information about bank customers address

    - legal requirements concerning privacy and fair credit reporting?
    - minimum standards or criteria for identifying a customer for solicitation?
    - acceptable calling times?
    - number of times a customer may be called?
    - steps to be taken to avoid confusing depositors about the nature of the products being offered?

Setting and Circumstances of Nondeposit Sales

18. Has a bank officer been assigned responsibility for reviewing all current and planned RNDIP sales locations to determine whether appropriate measures are in place to minimize customer confusion?

19. Are RNDIPs sold only at locations distinct from where deposits are accepted?

20. Are sales locations distinguished by the use of

- separate desks?
- distinguishing partitions, railings, or planters?
- signs?

21. If personnel both accept deposits and sell RNDIPs, do operating procedures address safeguards to prevent possible customer confusion?

22. Are the people who sell RNDIPs distinguished from people who accept deposits by such means as

    - name tags or badges?
    - business cards?

23. Do operating procedures prohibit tellers and other unlicensed bankers from offering investment advice, making sales recommendations, or discussing the merits of any RNDIP with customers?

24. Does the bank offer RNDIPs with product names that are not

    - identical to the bank's name?
    - similar to a deposit product?
    - using the words "insured," "bank," or "national?"

Disclosures and Advertising

25. Has bank management designated an officer to be responsible for ensuring that bank-prepared investment advertisements and advertisements prepared by any other party are accurate and include all required disclosures?

26. Are all salespeople provided with written disclosure guidelines for oral presentations?

27. Does the bank have an effective inventory control system in place to determine only authorized customer forms and promotional materials are in use?

28. Is a signed statement acknowledging disclosures obtained from each customer at the time that an RNDIP account is opened?

29. Is there a tracking system designed to monitor and obtain missing acknowledgments?

30. Does bank management adequately monitor and control the risk from the social media activities of its personnel and third parties in relation to RNDIP activities?

Qualifications and Training

31. Does the bank's staffing plan consider its RNDIP sales program?

32. Does the bank seek to employ dedicated investment specialists and not platform generalists as sales representatives?

33. Does management have written qualification requirements for outside hires of salespeople and sales program managers?

34. Is a system in place to document background inquiries made about new bank salespeople who have previous securities industry experience to check for a possible disciplinary history?

35. Has a bank officer been assigned responsibility for ensuring that adequate training is provided to bank staff?

36. Does the bank have a formal training program for unlicensed bankers who

    - make customer referrals for RNDIPs?
    - are engaged in bank direct RNDIP sales and recommendations?
    - are responsible for supervising people who make referrals or who engage in selling?

37. Has the bank implemented a training program specific for tellers and other unlicensed, deposit-taking bankers that addresses the restrictions in the GLBA networking exception?

38. Is this training offered as part of

    - initial training?
    - continuing training?

39. Is product training provided to

    - compliance staff?
    - audit staff?

40. Does the bank have a formal plan to meet future RNDIP sales training needs?

Suitability and Best Interest

For Bank Direct RNDIP Recommendations and Sales

41. Has a bank officer been assigned responsibility for implementing and monitoring the suitability system over bank direct RNDIP sales activities?

42. Are systems in place to assess that any salespeople involved in bank-related sales obtain sufficient information from customers to enable them to make a judgment about the suitability of recommendations for particular customers?

43. Are customer responses to suitability inquiries documented on a standard form or any other method that permits ready review?

44. Is there a tracking system designed to monitor and obtain missing suitability information?

45. Are new accounts reviewed and formally accepted by a manager before the first transfer is finalized?

46. Does the new account acceptance process include a review of the suitability inquiry and customer responses?

47. Is each sale approved in writing by a designated manager?

48. Is suitability information for active accounts updated periodically?

49. If the bank uses software programs to assist salespeople in making suitability judgments, does the program

    - weight bank proprietary products and bank deposits similarly to other products?
    - consider breakpoints?

50. If a software program is not used, has management identified which products meet certain investment objectives, or has management generally categorized products as suitable for unsophisticated, sophisticated, or risk-averse customers?

51. Does the bank implement suitability restrictions that limit certain transactions with first-time or risk-averse investors, or require a higher level of approval?

52. Is a bank officer who is independent of the sales force assigned responsibility for reviewing complaints and their resolution?

53. Has the bank voluntarily implemented any aspects of Regulation Best Interest into its direct sales program? If so,

    - is this set forth clearly in the bank's policies and procedures?
    - are those policies and procedures appropriate to assess compliance with the bank's implementation of those aspects of Regulation Best Interest?
    - has the bank made any representation to customers about its voluntary compliance with aspects of Regulation Best Interest?

For RNDIP Recommendations and Sales Conducted by Broker-Dealers

54. Does the bank require the broker-dealer to provide sufficient information to facilitate the bank's oversight of the sales practices? Does this information include (if applicable)

    - sales production and revenues by product, branch, and sales representative?

- sales to first-time and risk-averse investors?
- sales made by high- or low-volume salespersons?
- sales to senior clients?
- sales of complex products?
- sales of products with high commissions?
- a schedule of fees and charges to retail customers, including disclosures provided to retail customers relating to the costs of services?
- a list of proprietary products sold to retail customers?
- disclosures relating to monitoring of retail customers' accounts?
- disclosures of material limitations on accounts or services recommended to retail customers?
- surveillance reports?
- alerts indicating trade and policy exceptions?
- reversed trades?
- trade errors?
- promotional marketing programs that target a class of customers or focus on specific products or services?
- early redemptions (after a short holding period) of mutual funds, annuities, and structured products?
- replacement activity on annuities and structured products?
- commissions and other compensation rates on products?
- sales representatives subject to heightened supervision for sales practice issues?
- customer complaints, litigation, and settlements?
- information regarding functional regulators' findings and current reviews that relate to the bank's RNDIP sales program?

55. Based on the bank's information received from the third party on sales practices, complaints, functional regulators' findings, compliance, risk management, and internal audit, are there any indications of sales practice or best interest issues?

56. If your findings of bank direct sales practices indicate negative or uncertain results, review a sample of sales to determine whether transactions appear to be in the best interest of a customer, based on responses to the best interest inquiries. If your findings of a bank's sales program that uses a broker-dealer indicate sales practice concerns, consult with the EIC to determine whether to directly sample broker-dealer transactions or to require a bank compliance or audit function to conduct such a sample. The sample should include transactions involving

    - customer complaints.
    - marketing programs that target a class of customers.
    - first-time and risk-averse investors.
    - high- or low- volume salespeople.
    - new products.
    - complex and more volatile products.
    - proprietary products.

- early redemptions of annuities, mutual funds, or other RNDIPs after relatively short holding periods or that result in surrender charges or redemption fees.
- liquidations of structured products before maturity.

57. If, after the sample review, you are still not certain that recommendations are in the best interest of customers, direct bank management to conduct an independent review of all affected accounts and to report its findings to the EIC.

58. If you determine that customers may have been disadvantaged, discuss appropriate corrective action with senior management. Such action should be designed on a case-by-case basis and may include

    - full explanations to customers and, when appropriate, offers to rescind trades.
    - a recommendation to bring in an independent audit or special counsel to perform further review of customer transactions.
    - other action agreed upon between bank management and the EIC.

Compensation

59. Do supervisory policies eliminate referral fees or compensation increases associated with sales contests or the introduction of new products?

60. Determine whether bank employee compensation plans for referrals to brokers comply with the GLBA and Regulation R requirements. Evaluate whether

    - referral fees are nominal.
    - referral fees are one-time cash payments of fixed amounts.
    - payments are not conditioned on
        - a purchase or sale of a security;
        - an account being opened with a broker-dealer;
        - a transaction involving a particular type of security; or
        - multiple securities transactions.

61. Select a sample of bonus plans for bank employees and officers (who hold a securities license) who refer customers to broker-dealers or have a factor or variable in the bonus plan that relates to the bank's RNDIP sales program.

    - Determine whether payments are based in any way on the success (including revenues) of securities transactions conducted at a broker-dealer or referrals to a broker-dealer. (If not, payments under the plan would not be considered incentive compensation and no further analysis is required.)
    - Consider whether payments under the bonus plan are based on the overall profitability or revenue of the bank or any of its affiliates or operating units other than
        - a broker or dealer, or

  - an affiliate or operating unit that over time is predominately engaged in the business of making referrals to a broker-dealer.
    - If so, payments under the plan would not be considered incentive compensation, and no further analysis is required.
    - If not, proceed to the third step.
- If the bonus plan does not meet the standards in the preceding two bullets, then the plan needs to meet the following requirements to be considered permissible incentive compensation. Payments under the plan must be
  - paid on a discretionary basis and
  - based on multiple factors or variables, and
    - include significant factors or variables that are not related to securities transactions at the broker or dealer.
    - a referral made by the employee is not a factor or variable in determining the employee's compensation under the plan.
    - the employee's compensation under the plan is not determined by reference to referrals made by any other person.

62. If the bank chooses to pay higher than nominal referral fees or contingent fees for certain referrals of HNW or institutional customers to broker-dealers, determine that these fees comply with Regulation R requirements discussed in appendix C.

63. Do compensation arrangements comply with the restrictions in 12 CFR 163.76 that apply to offers and sales of an FSA's and its affiliates' securities on the FSA's premises?

64. Do policies and procedures preclude incentive compensation for bank direct RNDIP transactions based on the profitability of individual trades by, or accounts subject to the review of, bank employees who

    - review and approve individual sales?
    - accept new accounts?
    - review established customer accounts?

65. Do policies and procedures preclude payment of RNDIP compensation to department auditors or compliance personnel?

66. Does the management structure preclude control, audit, or compliance personnel from reporting to managers whose compensation is based on profits from RNDIP sales?

67. Does the compensation program reduce remuneration to sales program managers whose accounts show

    - missing documents?
    - unreported customer complaints?
    - reversed or "bad" sales?
    - compliance problems?

Compliance Program

68. Does the bank's written compliance program call for periodic reviews to determine compliance with policies, procedures, applicable laws and regulations, and safe and sound banking practices (refer to the examples outlined in the Interagency Statement)? Do those reviews cover

    - customer complaints and their resolution?
    - customer correspondence?
    - transactions with employees and directors or their business interests?
    - all advertising and promotional materials?
    - scripts or written guidelines for oral presentations?
    - training materials?
    - regular and frequent reviews of active customer accounts?
    - customer responses to suitability or best interest inquiries (as applicable) and a periodic comparison of those responses to the type and volume of account activity, with the goal of determining whether the activity in an account is appropriate?

69. Does the compliance program call for compliance personnel to perform continuing reviews of

    - changes in the system for reporting customer complaints and resolutions?
    - changes in previously approved standard correspondence with customers?
    - new advertising and promotional materials before use?
    - changes in existing training programs or new training programs?
    - changes in incentive compensation systems?
    - new products under development?

70. Does the timing, scope, and frequency of compliance reviews consider factors such as

    - changes or differences in incentive compensation paid on different or new products?
    - sales or referral contests?
    - patterns of sales for specific, especially new, products?
    - patterns of sales to customers who have been identified as risk-averse investors?
    - new salespeople?
    - customer complaints?

71. Does the bank have a system for ensuring that all complaints (written and oral) receive bank management's attention?

72. Is that system periodically tested by internal audit to determine whether bank management receives notice of all complaints?

73. Does the bank use automated exception reporting systems to flag potential compliance problems?

74. Do reports list

    - sales by product, including proprietary products?
    - significant or unusual (for the customer) individual sales?
    - sales of products the bank considers more volatile to customers whose suitability or best interest (as applicable) inquiry responses indicate an aversion to risk?
    - customer complaints by product, salesperson, and reason, so that patterns can be discerned?
    - unusual performance by salespersons, (e.g., high- or low-volume or single product sales)?
    - significant volumes of annuity or mutual fund redemptions after short holding periods?
    - early liquidations of structured products?

75. Do reports provide adequate information to conduct specific suitability or best interest (as applicable) reviews for customers such as

    - risk-averse investors?
    - first-time investors?
    - senior clients?
    - customers with other narrow investment objectives?

76. Does the bank employ "mystery shoppers" who pose as prospective customers and test the sales presentations for adherence to consumer protection standards?

77. Has the bank instituted a call-back program to verify whether customers understand their investment transactions?

78. Do inquiries in the call-back program include discussion of the customer's

    - understanding of what the customer has purchased?
    - understanding of the investment risks and the absence of deposit insurance coverage?
    - initial responses to the salesperson's suitability or best interest (as applicable) inquiry?
    - understanding of fees?
    - problems or complaints?
    - understanding of the bank's role in the transaction?

79. If the bank operates a call-back program, are records of customers' responses maintained?

Conclusion

80. Is the foregoing information considered an adequate basis for evaluating internal control in that there are no significant additional internal auditing procedures, accounting controls, administrative controls, or other circumstances that impair any controls or mitigate any weaknesses indicated through the steps in this section (explain negative answers briefly and indicate conclusions as to their effect on specific examination or verification procedures)?

81. Based on the answers to the foregoing questions, internal control for RNDIP sales is considered (strong, satisfactory, insufficient, or weak).

Verification Procedures

Verification procedures are used to verify the existence of assets and liabilities or test the reliability of financial records. Examiners generally do not perform verification procedures as part of a typical examination. Rather, verification procedures are performed when substantive safety and soundness concerns are identified that are not mitigated by the bank's risk management systems and internal controls.

RNDIP Sales Programs With Bank Direct Activity (No Broker-Dealer Involved)

1. Verify that bank employees involved in securities transactions are authorized by the bank to engage in RNDIP sales.

2. Determine that an adequate separation of duties is maintained within bank direct securities activities. When possible, determine whether the order-taking process is separated from operations settlement.

3. Review the bank's reconcilement of the key operational accounts used in the bank direct securities sales program, including the clearing, income, expense, and suspense accounts.

4. Review suspense accounts to determine whether the bank has procedures for the timely resolution of outstanding items.

5. Sample securities transactions to determine that

    - on or before the settlement date, the customer delivered the securities or payment to the bank and the bank issued proper receipts, trade confirmations, and delivered securities as appropriate.
    - if physical securities are held overnight by the bank, the securities are adequately safeguarded and maintained under dual control.
    - transactions involving book-entry securities are properly recorded.
    - operating procedures are effective to prevent customers from purchasing securities with uncollected funds drawn on bank deposit accounts. Trace transaction cash flows to verify the process.

6. Select items from fail records and determine that the bank has procedures for the timely resolution of the failed securities transactions.

7. Request the custodian's detailed lists of securities held on behalf of the bank's securities customers and verify this list with the bank's records.

8. Review selected new accounts to determine that they have been opened in compliance with existing policies and procedures. Determine whether the account opening applications were signed by the person requesting the account and received approval from the authorized parties within the bank.

9. Select a sample of accounts to determine that the fees charged to customers comply with applicable legal requirements and the established fee schedule.

10. Verify the bank's procedures for closing accounts. A bank should receive customer authorization, issue a receipt for securities distributed, and prepare a final customer accounting.

11. Determine the accuracy of the account statements distributed to the customers by the bank.

RNDIP Sales Programs Using a Broker-Dealer (Affiliated or Unaffiliated With the Bank)

1. Verify that the bank performs an effective, periodic review of the broker-dealer's financial condition, integrity, standing with securities regulators, and customer service.

2. Review records verifying that any agreed-upon income/expense sharing arrangements between the bank and the broker-dealer are in compliance with the written agreement.

3. Confirm that any lease arrangements where the broker-dealer leases space from the bank are conducted under a bona fide lease agreement that provides for fair market rent or an equitable commission sharing arrangement. This is particularly important for affiliate arrangements to determine whether any lease arrangement is at arm's length.

4. Verify that any referral fees paid by the bank or the broker-dealer to bank employees comply with the GLBA and Regulation R and requirements that limit this fee to a one-time nominal fee of a fixed dollar amount for each customer referral, and that any fee paid is not dependent on a transaction occurring.

5. Verify the effectiveness of operating procedures designed to prevent customers from purchasing securities with uncollected funds drawn on bank deposit accounts. Trace transaction cash flows to verify the process.

Appendixes

Appendix A: Interagency Statement on Retail Sales of Nondeposit Investment Products

This appendix contains the full text of the February 15, 1994, "Interagency Statement on Retail Sales of Nondeposit Investment Products," issued by the FRB, FDIC, OCC, and OTS. Footnotes 1-3 from the Interagency Statement appear at the end of this appendix.

INTRODUCTION

Recently many insured depository institutions have expanded their activities in recommending or selling to retail customers nondeposit investment products, such as mutual funds and annuities. Many depository institutions are providing these services at the retail level, directly or through various types of arrangements with third parties.

Sales activities for nondeposit investment products should ensure that customers for these products are clearly and fully informed of the nature and risks associated with these products. In particular, where nondeposit investment products are recommended or sold to retail customers, depository institutions should ensure that customers are fully informed that the products:

- Are not insured by the FDIC;
- Are not deposits or other obligations of the institution and are not guaranteed by the institution; and,
- Are subject to investment risks, including possible loss of principal invested.

Moreover, sales activities involving these investment products should be designed to minimize the possibility of customer confusion and to safeguard the institution from liability under the applicable antifraud provisions of the federal securities laws, which, among other things, prohibit materially misleading or inaccurate representations in connection with the sale of securities.

The four federal banking agencies — the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision — are issuing this Statement to provide uniform guidance to depository institutions engaging in these activities.[1]

SCOPE

This Statement applies when retail recommendations or sales of nondeposit investment products are made by:

- Employees of the depository institution;

- Employees of a third party, which may or may not be affiliated with the institution,[2] occurring on the premises of the institution (including telephone sales or recommendations by employees or from the institution's premises and sales or recommendations initiated by mail from its premises); and
- Sales resulting from a referral of retail customers by the institution to a third party when the depository institution receives a benefit for the referral.

These guidelines generally do not apply to the sale of nondeposit investment products to non-retail customers, such as sales to fiduciary accounts administered by an institution.[3] However, as part of its fiduciary responsibility, an institution should take appropriate steps to avoid potential customer confusion when providing nondeposit investment products to the institution's fiduciary customers.

ADOPTION OF POLICIES AND PROCEDURES

Program Management. A depository institution involved in the activities described above for the sale of nondeposit investment products to its retail customers should adopt a written statement that addresses the risks associated with the sales program and contains a summary of policies and procedures outlining the features of the institution's program and addressing, at a minimum, the concerns described in this Statement. The written statement should address the scope of activities of any third party involved, as well as the procedures for monitoring compliance by third parties in accordance with the guidelines below. The scope and level of detail of the statement should appropriately reflect the level of the institution's involvement in the sale or recommendation of nondeposit investment products. The institution's statement should be adopted and reviewed periodically by its board of directors. Depository institutions are encouraged to consult with legal counsel with regard to the implementation of a nondeposit investment product sales program.

The institution's policies and procedures should include the following:

- **Compliance procedures.** The procedures for ensuring compliance with applicable laws and regulations and consistency with the provisions of this Statement.
- **Supervision of personnel involved in sales.** A designation by senior managers of specific individuals to exercise supervisory responsibility for each activity outlined in the institution's policies and procedures.
- **Types of products sold.** The criteria governing the selection and review of each type of product sold or recommended.
- **Permissible use of customer information.** The procedures for the use of information regarding the institution's customers for any purpose in connection with the retail sale of nondeposit investment products.
- **Designation of employees to sell investment products.** A description of the responsibilities of those personnel authorized to sell nondeposit investment products and of other personnel who may have contact with retail customers concerning the sales program, and a description of any appropriate and inappropriate referral activities and the training requirements and compensation arrangements for each class of personnel.

Arrangements with Third Parties. If a depository institution directly or indirectly, including through a subsidiary or service corporation, engages in activities as described above under which a third party sells or recommends nondeposit investment products, the institution should, prior to entering into the arrangement, conduct an appropriate review of the third party. The institution should have a written agreement with the third party that is approved by the institution's board of directors. Compliance with the agreement should be periodically monitored by the institution's senior management. At a minimum, the written agreement should:

- Describe the duties and responsibilities of each party, including a description of permissible activities by the third party on the institution's premises, terms as to the use of the institution's space, personnel, and equipment, and compensation arrangements for personnel of the institution and the third party.
- Specify that the third party will comply with all applicable laws and regulations, and will act consistently with the provisions of this Statement and, in particular, with the provisions relating to customer disclosures.
- Authorize the institution to monitor the third party and periodically review and verify that the third party and its sales representatives are complying with its agreement with the institution.
- Authorize the institution and the appropriate banking agency to have access to such records of the third party as are necessary or appropriate to evaluate such compliance.
- Require the third party to indemnify the institution for potential liability resulting from actions of the third party with regard to the investment product sales program.
- Provide for written employment contracts, satisfactory to the institution, for personnel who are employees of both the institution and the third party.

GENERAL GUIDELINES

1. Disclosures and Advertising

The banking agencies believe that recommending or selling nondeposit investment products to retail customers should occur in a manner that assures that the products are clearly differentiated from insured deposits. Conspicuous and easy to comprehend disclosures concerning the nature of nondeposit investment products and the risk inherent in investing in these products are one of the most important ways of ensuring that the differences between nondeposit products and insured deposits are understood.

Content and Form of Disclosure. Disclosures with respect to the sale or recommendation of these products should, at a minimum, specify that the product is:

- Not insured by the FDIC;
- Not a deposit or other obligation of, or guaranteed by, the depository institution;
- Subject to investment risks, including possible loss of the principal amount invested.

The written disclosures described above should be conspicuous and presented in a clear and concise manner. Depository institutions may provide any additional disclosures that further clarify the risks involved with particular nondeposit investment products.

Timing of Disclosure. The minimum disclosures should be provided to the customer:

- Orally during any sales presentation,
- Orally when investment advice concerning nondeposit investment products is provided,
- Orally and in writing prior to or at the time an investment account is opened to purchase these products, and
- In advertisements and other promotional materials, as described below.

A statement, signed by the customer should be obtained at the time such an account is opened, acknowledging that the customer has received and understands the disclosures. For investment accounts established prior to the issuance of these guidelines, the institution should consider obtaining such a signed statement at the time of the next transaction.

Confirmations and account statements for such products should contain at least the minimum disclosures if the confirmations or account statements contain the name or the logo of the depository institution or an affiliate. (**Note:** These disclosures should be made in addition to any other confirmation disclosures that are required by law or regulation, e.g., 12 CFR 12, 208.8(k)(3) [**Now** 208.34], and 344.) If a customer's periodic deposit account statement includes account information concerning the customer's nondeposit investment products, the information concerning these products should be clearly separate from the information concerning the deposit account, and should be introduced with the minimum disclosures and the identity of the entity conducting the nondeposit transaction.

Advertisements and Other Promotional Material. Advertisements and other promotional and sales material, written or otherwise, about nondeposit investment products sold to retail customers should conspicuously include at least the minimum disclosures discussed above and must not suggest or convey any inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance. The minimum disclosures should also be emphasized in telemarketing contacts. Any third-party advertising or promotional material should clearly identify the company selling the nondeposit investment product and should not suggest that the depository institution is the seller. If brochures, signs, or other written material contain information about both FDIC-insured deposits and nondeposit investment products, these materials should clearly segregate information about nondeposit investment products from the information about deposits.

Additional Disclosures. Where applicable, the depository institution should disclose the existence of an advisory or other material relationship between the institution or an affiliate of the institution and an investment company whose shares are sold by the institution and any material relationship between the institution and an affiliate involved in providing nondeposit investment products. In addition, where applicable, the existence of any fees, penalties, or surrender charges should be disclosed. These additional disclosures should be made prior to or at the time an investment account is opened to purchase these products.

If sales activities include any written or oral representations concerning insurance coverage provided by any entity other than the FDIC, e.g., the Securities Investor Protection Corporation (SIPC), a state insurance fund, or a private insurance company, then clear and accurate written or oral explanations of the coverage must also be provided to customers when the representations concerning insurance coverage are made, in order to minimize possible confusion with FDIC insurance. Such representations should not suggest or imply that any alternative insurance coverage is the same as or similar to FDIC insurance.

Because of the possibility of customer confusion, a nondeposit investment product must not have a name that is identical to the name of the depository institution. Recommending or selling a nondeposit investment product with a name similar to that of the depository institution should only occur pursuant to a sales program designed to minimize the risk of customer confusion. The institution should take appropriate steps to assure that the issuer of the product has complied with any applicable requirements established by the Securities and Exchange Commission regarding the use of similar names.

2. Setting and Circumstances

Selling or recommending nondeposit investment products on the premises of a depository institution may give the impression that the products are FDIC-insured or are obligations of the depository institution. To minimize customer confusion with deposit products, sales or recommendations of nondeposit investment products on the premises of a depository institution should be conducted in a physical location distinct from the area where retail deposits are taken. Signs or other means should be used to distinguish the investment sales area from the retail deposit-taking area of the institution. However, in the limited situation where physical considerations prevent sales of nondeposit products from being conducted in a distinct area, the institution has a heightened responsibility to ensure appropriate measures are in place to minimize customer confusion.

In no case, however, should tellers and other employees, while located in the routine deposit-taking area, such as the teller window, make general or specific investment recommendations regarding nondeposit investment products, qualify a customer as eligible to purchase such products, or accept orders for such products, even if unsolicited. Tellers and other employees who are not authorized to sell nondeposit investment products may refer customers to individuals who are specifically designated and trained to assist customers interested in the purchase of such products.

3. Qualifications and Training

The depository institution should ensure that its personnel who are authorized to sell nondeposit investment products or to provide investment advice with respect to such products are adequately trained with regard to the specific products being sold or recommended. Training should not be limited to sales methods, but should impart a thorough knowledge of the products involved, of applicable legal restrictions, and of customer protection requirements. If depository institution personnel sell or recommend securities, the training should be the substantive equivalent of that required for personnel qualified to sell

securities as registered representatives. (**Note:** Savings associations are not exempt from the definitions of "broker" and "dealer" in Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934; therefore, all securities sales personnel in savings associations must be registered representatives.) [**Now -** The Financial Services Regulatory Relief Act of 2006 gave FSAs parity with banks with the regard to the Securities Exchange Act.]

Depository institution personnel with supervisory responsibilities should receive training appropriate to that position. Training should also be provided to employees of the depository institution who have direct contact with customers to ensure a basic understanding of the institution's sales activities and the policy of limiting the involvement of employees who are not authorized to sell investment products to customer referrals. Training should be updated periodically and should occur on an ongoing basis.

Depository institutions should investigate the backgrounds of employees hired for their nondeposit investment products sales programs, including checking for possible disciplinary actions by securities and other regulators if the employees have previous investment industry experience.

4. Suitability and Sales Practices

Depository institution personnel involved in selling nondeposit investment products must adhere to fair and reasonable sales practices and be subject to effective management and compliance reviews with regard to such practices. In this regard, if depository institution personnel recommend nondeposit investment products to customers, they should have reasonable grounds for believing that the specific product recommended is suitable for the particular customer on the basis of information disclosed by the customer. Personnel should make reasonable efforts to obtain information directly from the customer regarding, at a minimum, the customer's financial and tax status, investment objectives, and other information that may be useful or reasonable in making investment recommendations to that customer. This information should be documented and updated periodically.

5. Compensation

Depository institution employees, including tellers, may receive a one-time nominal fee of a fixed dollar amount for each customer referral for nondeposit investment products. The payment of this referral fee should not depend on whether the referral results in a transaction.

Personnel who are authorized to sell nondeposit investment products may receive incentive compensation, such as commissions, for transactions entered into by customers. However, incentive compensation programs must not be structured in such a way as to result in unsuitable recommendations or sales being made to customers.

Depository institution compliance and audit personnel should not receive incentive compensation directly related to results of the nondeposit investment sales program.

6. Compliance

Depository institutions should develop and implement policies and procedures to ensure that nondeposit investment product sales activities are conducted in compliance with applicable laws and regulations, the institution's internal policies and procedures, and in a manner consistent with this Statement. Compliance procedures should identify any potential conflicts of interest and how such conflicts should be addressed. The compliance procedures should also provide for a system to monitor customer complaints and their resolution. Where applicable, compliance procedures also should call for verification that third party sales are being conducted in a manner consistent with the governing agreement with the depository institution.

The compliance function should be conducted independently of nondeposit investment product sales and management activities. Compliance personnel should determine the scope and frequency of their own review, and findings of compliance reviews should be periodically reported directly to the institution's board of directors, or to a designated committee of the board. Appropriate procedures for the nondeposit investment product programs should also be incorporated into the institution's audit program.

SUPERVISION BY BANKING AGENCIES

The federal banking agencies will continue to review a depository institution's policies and procedures governing recommendations and sales of nondeposit investment products, as well as management's implementation and compliance with such policies and all other applicable requirements. The banking agencies will monitor compliance with the institution's policies and procedures by third parties that participate in the sale of these products. The failure of a depository institution to establish and observe appropriate policies and procedures consistent with this Statement in connection with sales activities involving nondeposit investment products will be subject to criticism and appropriate corrective action.

Questions on the Statement may be submitted to:

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.
OCC Office of the Chief National Bank Examiner, Capital Markets Group, (202) 874-5070 [**now** Market Risk, Asset Management Group, (202) 649-6360].
OTS Office of Supervision Policy, (202) 906-5740; Corporate and Securities Division, (202) 906-7289. [**now** OCC Market Risk, Asset Management Group, (202) 649-6360].

/s/Richard Spillenkothen
Director, Division of Banking
Supervision & Regulation
Federal Reserve Board

/s/Stanley J. Poling
Director, Division of Supervision
Federal Deposit Insurance Corporation

/s/Susan F. Krause
Senior Deputy Comptroller for
Bank Supervision Policy
Office of the Comptroller of the Currency

/s/John C. Price
Acting Assistant Director for Policy
Office of Thrift Supervision

EFFECTIVE DATE: February 15, 1994

[1] Each of the four banking agencies has in the past issued guidelines addressing various aspects of the retail sale of nondeposit investment products. OCC Banking Circular 274 (July 19, 1993); FDIC Supervisory Statement FIL-71-93 (October 8, 1993); Federal Reserve Letters SR 93-35 (June 17, 1993), and SR 91-14 (June 6, 1991); OTS Thrift Bulletin 23-1 (September 7, 1993). This Statement is intended to consolidate and make uniform the guidance contained in the various existing statements of each of the agencies, all of which are superseded by this Statement. Some of the banking agencies have adopted additional guidelines covering the sale of certain specific types of instruments by depository institutions, i.e., obligations of the institution itself or of an affiliate of the institution. These guidelines remain in effect except where clearly inapplicable.

[2] This Statement does not apply to the subsidiaries of insured state nonmember banks, which are subject to separate provisions, contained in 12 CFR 337.4, relating to securities activities. For OTS-regulated institutions that conduct sales of nondeposit investment products through a subsidiary, these guidelines apply to the subsidiary. 12 CFR 545.74 [**now** 12 CFR 238.53(i)] also applies to such sales. Branches and agencies of U.S. foreign banks should follow these guidelines with respect to their nondeposit investment sales programs.

[3] Restrictions on a national bank's use as fiduciary of the bank's brokerage service or other entity with which the bank has a conflict of interest, including purchases of the bank's proprietary and other products, are set out in 12 CFR 9.12. Similar restrictions on transactions between funds held by a federal savings association as fiduciary and any person or organization with whom there exists an interest that might affect the best judgment of the association acting in its fiduciary capacity are set out in 12 CFR 550.10 [**now** 12 CFR 150.330-150.370].

Appendix B: Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products

This appendix contains the full text of the September 12, 1995, "Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products," issued by the OCC, OTS, FRB, and FDIC. Footnote 1 from the Joint Interpretations appears at the end of the statement and before the accompanying response to the American Bankers Association.

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 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

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 [**now** Market Risk, Asset Management Group, (202) 649-6360].

OTS Office of Supervision Policy (202) 906-5740; Business Transactions Division, (202) 906-7289. [**now** OCC Market Risk, Asset Management Group, (202) 649-6360].

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) 898-3196.

[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 ATMs.

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

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

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

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

Dated: September 12, 1995

This is a continuation of the Joint Interpretations. This is the full text of the September 12, 1995, accompanying response to the American Bankers Association from the FRB, FDIC, OCC, and OTS.

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 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 standalone 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 noninstitutional 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,

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

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

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

/s/John F. Downey
Acting Director,
Division of Supervision
For: Office of Thrift Supervision

Dated: September 12, 1995

Appendix C: Regulation R Rule 701 Exemption for Referral of HNW/Institutional Customers

Regulation R Rule 701 provides banks a conditional exemption from the compensation limits required in the networking exception for certain referrals of HNW or institutional customers. The HNW/institutional customer exemption has all the conditions of Rule 700 except that the referral fee may be more than a nominal amount and payment of the referral fee may be contingent on whether the referral results in a transaction with the broker-dealer. Rule 701 also has additional conditions, such as specific disclosures. While the additional conditions provide some degree of investor protection, they rely on the assumption that, with appropriate disclosures, HNW/institutional customers can understand and evaluate the financial interest of a bank employee making a referral to a broker-dealer under the exemption.

Referral Fee

For purposes of the HNW/institutional customer exemption, the term "referral fee" means a fee (paid in one or more installments) for the referral of a customer to a broker-dealer when the fee is either

- a predetermined dollar amount, or a dollar amount determined by a predetermined formula (such as a fixed percentage of the dollar amount of total assets placed in an account with a broker-dealer) that does not vary based on any of the following:
  - the revenue generated by or the profitability of the securities transactions conducted by the customer with the broker or dealer.
  - the quantity, price, or identity of the securities transactions conducted over time by the customer with the broker or dealer.
  - the number of customer referrals made.
- a dollar amount based on a fixed percentage of the revenues received by a broker or dealer for investment banking services provided to the customer.

"Predetermined" means established or fixed before the referral is made. The requirement that the amount of the referral fee not vary based on the number of customer referrals made does not prohibit an employee from receiving a referral fee for each referral made by the employee under the exemption. The restrictions do not prevent a referral fee from being based on a fixed percentage of the total dollar amount of assets (including securities and nonsecurities assets) maintained by the customer with the broker-dealer. A referral fee paid under the exemption may be contingent on whether the customer opens an account with the broker-dealer or executes one or more transactions in the account during the initial phases of the account.

HNW or Institutional Customer

Rule 701 of Regulation R defines an HNW customer as either

- a natural person who, either individually or jointly with a spouse, has a net worth of at least $5 million, excluding equity in his or her primary residence.
- any revocable or living trust, where the settlor is a natural person and meets the $5 million net worth requirement.

For purposes of determining whether a natural person meets the $5 million net worth test, the assets of a person include

- any assets held individually.
- if the person is acting jointly with his or her spouse, any assets of the person's spouse (whether or not such assets are held jointly).
- if the person is not acting jointly with his or her spouse, 50 percent of any assets held jointly with such person's spouse and any assets in which such person shares with such person's spouse a community property or similar shared ownership interest.

Rule 701 defines an institutional customer as a corporation, partnership, limited liability company, trust, or other non-natural person with at least

- $10 million in investments; or
- $20 million in revenues; or
- $15 million in revenues if the referral is for investment banking services.

Rule 701 defines "investment banking services" to include, without limitation, acting as an underwriter in an offering for an issuer; acting as a financial adviser in a merger, acquisition, tender-offer, or similar transaction; providing venture capital, equity lines of credit, private investment, private equity transactions or similar investments; serving as placement agent for an issuer; and engaging in similar activities. The phrase "other similar services" would include, for example, acting as an underwriter in a secondary offering of securities and acting as a financial adviser in a divestiture.

The dollar thresholds detailed previously were adjusted for inflation beginning on April 1, 2012, and will be updated every five years thereafter. This inflation adjustment uses the Department of Commerce's personal consumption Expenditures Chain-Type Price Index and rounds to the nearest multiple of $100,000.

Conditions

In order for a bank to pay a greater than nominal referral fee or a contingent referral fee, several specific requirements must be met.

Bank Employee Restrictions

To receive higher than nominal referral fees under this exemption, a bank employee must meet the following requirements:

- Not be registered or required to be registered with FINRA.
- Be predominantly engaged in banking activities other than making referrals to broker-dealers.
- Not be subject to any statutory disqualification.
- Encounter HNW/institutional customers in the ordinary course of the employee's duties.

A bank employee receiving a higher than nominal referral fee should be making the referrals as part of the employee's duties as a bank employee and not as a sales representative of the broker-dealer. Even if a bank employee encounters customers or potential customers outside the employee's regular business hours or at locations outside of the bank, such as at social or civic functions or gatherings, this is nonetheless considered to be in the ordinary course of the employee's duties.

Bank Determinations and Obligations

- **Disclosures:** When making a referral of an HNW/institutional customer, the bank must disclose to that customer
  - the name of the broker-dealer.
  - the fact that the bank employee participates in an incentive compensation program where the employee may receive a referral fee of more than a nominal amount.
  - payment of this fee may be contingent on whether the referral results in a transaction.

  The bank must provide the disclosures in a clear and conspicuous manner, either
  - in writing prior to or at the time of the referral; or
  - orally prior to or at the time of the referral, if the bank provides the required disclosure information in writing within three business days of the referral, or the written agreement between the bank and the broker-dealer requires the broker-dealer provide the required disclosures.

  Customers should receive the required disclosures either orally or in writing in a manner designed to call attention to the nature and significance of the information.

- **Customer qualification determinations:** The bank must have a reasonable basis to believe that the customer is
  - an HNW customer prior to or at the time of referral.
  - an institutional customer before the bank employee receives the referral fee.

  A bank or broker-dealer would have a reasonable basis to believe that a customer is an HNW or institutional customer if, for example, the bank or broker-dealer obtains a signed acknowledgment from the customer (or, in the case of an institutional customer, from an appropriate representative of the customer) that the customer meets the applicable

standards to be considered an HNW or an institutional customer. The bank employee making the referral or the broker-dealer employee dealing with the referred customer does not have information that would cause the employee to believe that the information provided by the customer (or representative) is false.

- **Employee qualification information:** Before a referral fee is paid to a bank employee under this exemption, the bank must provide the broker-dealer the name of the employee and such other information necessary for the broker-dealer to determine whether the employee is required to be registered with FINRA, and confirm that the employee is not subject to a statutory disqualification.

  Once the information for a particular employee is conveyed to the broker-dealer, the bank is required to provide its broker-dealer partner, at least annually, any changes to the identifying information initially provided if the bank employee continues making referrals and receiving referral fees under this exemption. This process enables the broker-dealer to effectively perform its periodic review (at least annually) of the bank employee's qualifications.

- **Good faith compliance:** Given the complexity of the conditions associated with this exemption, a good faith compliance provision was adopted. A bank that fails to comply with the required bank determinations and obligations will not lose its exemption if it acts in good faith, has reasonable policies and procedures in place to comply with its responsibilities, takes reasonable and prompt steps to remedy the error and, if needed, reclaims the referral fee from the bank employee. The exemption provides that a bank that acts in good faith and has reasonable policies and procedures in place to comply with the requirements of the exemption will not be considered a "broker" under section 3(a)(4) of the Securities Exchange Act solely because the bank fails, in a particular instance, to
  - determine that a customer is an institutional or HNW customer.
  - provide the customer the required disclosures.
  - provide the broker-dealer the required information concerning the bank employee receiving the referral fee within the time periods prescribed.

The written agreement between the bank and the broker-dealer shall require the broker-dealer to meet certain obligations that include the following:

- **Written disclosures:** If under the written agreement, the broker-dealer is to provide written disclosures, these disclosures must be provided to the customer either
  - prior to or at the time the customer begins the process of opening an account at the broker-dealer; or
  - prior to the time the customer places an order for a securities transaction with the broker-dealer as a result of the referral, if the customer already has an account at the broker-dealer.

- **Customer and employee qualifications:** Before the referral fee is paid to the bank employee, the broker-dealer must
  - have a reasonable basis to believe that the customer referred is an HNW or an institutional customer.
  - determine that the referring bank employee is not subject to a statutory disqualification.

- **Suitability**[56] **or sophistication determination:** The broker-dealer is required to do the following:
  - If the referral fee is contingent on the completion of a securities transaction, the broker-dealer, prior to conducting the securities transaction, must perform a suitability analysis in accordance with FINRA's rules as if the broker-dealer had recommended the securities transaction.
  - If the referral fee is noncontingent, before the referral fee is paid, the broker-dealer must either determine that the customer meets a two-part sophistication analysis or perform a suitability analysis. Under the sophistication analysis, the broker-dealer must determine the customer
    - has the capability to evaluate investment risk and make independent decisions.
    - is exercising independent judgment based on the customer's own independent assessment of the opportunities and risks presented by a potential investment, market factors, and other investment considerations.
  - If the broker-dealer does not perform the sophistication analysis, the broker-dealer must perform a suitability analysis of all transactions requested by the customer contemporaneously with the referral.

- **Notice to the customer:** The broker-dealer has the obligation to inform the customer if the broker-dealer determines that the customer or the securities transaction does not meet the sophistication or the suitability analysis.

- **Notice to the bank:** The broker-dealer must promptly inform the bank if the broker-dealer determines that the customer is not an HNW or institutional customer or the bank employee is subject to statutory disqualification.

[56] As of the publication of this booklet, Regulation R has not been modified to take into account the best interest standard.

Appendix D: SEC Memorandum on Bank Mutual Fund Names

United States
Securities and Exchange Commission
Washington, D.C. 20549

May 7, 1993

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Dingell:

In response to your request of March 9, 1993, I asked the Division of Investment Management to prepare the enclosed memorandum on Commission and staff actions regarding mutual funds that have the same names as, or names similar to, banks that advise the funds or sell the funds' shares. As you can see, the Commission's staff is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, and are not insured or otherwise protected by the federal government.

I hope this memorandum satisfactorily responds to your questions. If you have any further questions regarding the issues raised in your letter, please contact me, Barbara J. Green, Deputy Director, or Thomas S. Harman, Associate Director, Division of Investment Management.

Sincerely,

/s/Richard C. Breeden
Chairman
Enclosure

*This appendix contains the full text of the May 6, 1993 "*Memorandum on Commission and staff actions regarding mutual funds," *issued by the SEC. Footnotes 1-14 for the following memorandum appear at the end of this appendix.*

MEMORANDUM

May 6, 1993

To: Chairman Breeden

From: Barbara Green, Deputy Director
Thomas S. Harman, Associate Director
Division of Investment Management

Subject: Bank Mutual Fund Names

This memorandum responds to Chairman Dingell's letter of March 9, 1993 in which he asks several questions about what, if any, action the Commission has taken or intends to take to ensure that investors in bank advised or bank sold mutual funds are not misled into believing that their investments are guaranteed or insured in the same manner as bank deposits. In particular, Chairman Dingell expresses concern regarding mutual funds that have names that are the same as, or similar to, banks that advise the funds or sell the funds' shares ("common name funds"). Chairman Dingell's questions and our responses are set forth below.

Question 1. What prohibitions or restrictions do current Commission rules and regulations contain with respect to common or shared bank and mutual fund names, and under what authorities? Please explain the rationale for said provisions or the lack thereof.

Section 35(d) of the Investment Company Act of 1940 ("1940 Act") provides the Commission with the authority to issue an order declaring that any word or words that a mutual fund uses in its name are deceptive or misleading. The staff has taken the position under the authority of Section 35(d) that a mutual fund should not use in its name certain generic terms that may mislead investors into believing that the fund's shares are federally insured.[1] The staff also does not permit mutual funds that invest in U.S. government securities to use terms in their names or advertising that imply that the securities issued by the funds are guaranteed or insured by the U.S. government.[2]

The Commission previously has not adopted any rules or regulations prohibiting or restricting mutual funds' use of common names. However, after carefully reviewing the risk that mutual funds sold on bank premises could be misconstrued as having the benefit of either federal deposit insurance or the liquidity protections of the discount window of the Federal Reserve, the Division is of the view, under the authority of Section 35(d), that common names between federally insured institutions and funds sold or marketed by or through such institutions are presumptively misleading. A common name fund can rebut this presumption through prominent disclosure on the cover page of its prospectus that the fund's

shares are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency.

As noted in response to question 4, the Commission has not taken a formal position regarding whether Section 35 should be amended to restrict or prohibit the use of common names. There is a risk that, no matter how prominent the disclosure, some customers will not appreciate that their investment in a mutual fund sold by or through a bank, especially if marketed in the lobby of the bank, could potentially fall precipitously in value in response to changes in the value of portfolio securities. The staff expects to continue to review the question of whether common names should be barred notwithstanding the level of disclosure, but the staff has not reached any such conclusion at this time.

Question 2. What disclosures are required to prospective customers, and under what authorities? Please explain the rationale for these requirements.

The Division will require disclosure in three situations. First, the staff will require any common name fund to disclose prominently on the cover page of its prospectus that shares in the fund are not deposits or obligations of, or guaranteed or endorsed by, the bank, and that the shares are not federally insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency. The staff considers a disclosure to be prominent if it appears in some typographically distinct manner (e.g., boldface, italics, red letters, etc.). Second, the staff already requires any mutual fund whose shares are sold exclusively by or through a bank to provide essentially the same disclosure on the cover page of its prospectus.[3] Finally, the staff will require any bank sold mutual fund to make the same disclosure, even where that fund's shares are not sold exclusively through banks and the fund is not a common name fund.

As stated above, the Division is of the view that common names are presumptively misleading. The authority for requiring these disclosures is the Commission's broad authority to require that a prospectus contain the necessary material information to make the statements contained in the prospectus not misleading.[4] The policies underlying section 35(d) provide additional authority to require disclosure with respect to common name funds. In addition, as discussed more fully below in response to question 5, broker-dealers and thrift employees, though not bank employees, are subject to certain disclosure requirements in connection with the sale of mutual fund shares to bank and thrift customers.

Question 3. What action has the Commission taken or intends to take in response to the recent adoption by mutual funds of names similar to the banking organizations that advise them? Please explain the rationale.

As noted above, the Division is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, that the shares are not guaranteed or endorsed by the bank, and that the shares are not insured or otherwise protected by the Federal Deposit Insurance

Corporation, the Federal Reserve Board, or any other federal agency. The Division has reviewed a significant number of common name fund prospectuses and found that a large number already have rebutted the presumption through disclosure. The Division will require that all other common name funds amend their prospectuses in the future so that they will similarly rebut the presumption through disclosure. The Division also is considering whether the rules governing mutual fund advertising should be amended to address issues raised by common name funds.[5]

Question 4. What steps, if any, does the Commission believe are warranted to achieve consistent protection in this area?

As noted above, the Division is of the view that common names are presumptively misleading. A common name fund can rebut this presumption, however, through prominent disclosure on the cover page of its prospectus that the fund's shares are not deposits or obligations of the bank, that the shares are not guaranteed or endorsed by the bank, and that the shares are not insured or otherwise protected by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other federal agency. Of course, the Division will apply this policy consistently to all registered funds advised by or sold through banks, thrifts or any insured depository institution.[6] The Commission currently does not have a position regarding whether Section 35(d) or other federal securities laws should be amended to restrict expressly or to prohibit mutual funds from using common names. The Division will continue to monitor this issue with a view towards making any needed recommendations.

Question 5. To the knowledge of the Commission, are tellers and other personnel on bank and thrift premises complying with the applicable requirements? What resources have been committed to ensuring compliance in this area?

Because banks are expressly excluded from the broker-dealer provisions of the Securities Exchange Act of 1934 ("Exchange Act"),[7] the Commission does not have the oversight authority or the ability to allocate the resources necessary to determine if bank tellers and other bank personnel are complying with the federal securities laws. The Commission's regulatory and oversight authority with respect to personnel that sell securities on the premises of a bank is limited to the employees of registered broker-dealers, which includes bank subsidiaries and affiliates because the subsidiaries and affiliates are not covered by the bank exclusion. The Commission also has authority over the securities activities of personnel of thrift institutions (and other institutions not covered by the bank exclusion) that enter into "networking" or "kiosk" arrangements with broker-dealers.[8] These persons are subject to specific restrictions on their activities, as set forth in a series of no-action letters, which are described in detail in a staff memorandum forwarded to you by Chairman Breeden on February 19, 1993 ("Memorandum").[9] Dual employees of broker-dealers and thrift institutions that enter into networking arrangements, for example, are required to disclose material information to investors about the risks of investing in mutual funds, including the fact that they are not federally insured or guaranteed by the institution. In addition, unregistered personnel of the institution are expressly prohibited from engaging in any sales

activities. These important protections for customers are not available to the customers of banks, whose employees are exempt by current law from any similar requirements.

As noted in the Memorandum, to ensure compliance with these no-action letters, during the last fiscal year the Commission staff conducted examinations of several thrift institution networking arrangements, focusing on the broker-dealer's branch office review procedures, supervision of registered and unregistered employees, advertising, and sales practices. These examinations revealed substantial compliance with the provisions of the Exchange Act and the terms of the individual no-action letters, and isolated compliance problems were effectively addressed. The Commission, however, intends to continue to use its examination authority to monitor the sales practices and supervisory procedures of broker-dealers that sell mutual funds.

In addition, self-regulatory organizations ("SROs"), with Commission support, have taken steps to ensure that broker-dealers and their personnel that sell securities on bank or thrift premises are fully aware of and in compliance with their disclosure obligations under the federal securities laws.[10]

Although the Commission to date has not received a significant number of investor complaints about bank mutual funds,[11] to supplement the efforts of the SROs, the Commission staff is currently developing educational materials discussing the risks of investing in bank mutual funds and other uninsured products, for future distribution to investors.

Question 6. What are the risks to the insured depository institution in terms of customer backlash and litigation liability if common-name or common-logo funds suffer losses? What steps can be taken or are being taken to eliminate or manage these risks?

We do not know whether and to what extent an insured depository institution would experience "customer backlash" or be subject to litigation if a common-name or common-logo mutual fund suffers losses. We believe that these questions, as well as the question regarding what steps have been or are being taken to address any risks, would be more appropriately directed to the banking regulators.

A bank or thrift would not be liable under the federal securities laws solely because a common-name or common-logo fund whose name is not otherwise misleading suffers losses. The bank or thrift may be liable under the federal securities laws, however, if it commits fraud in connection with the purchase or sale of securities.[12] In addition, a bank or thrift that sells a security by means of a prospectus or oral communication that contains an untrue statement of a material fact or omits to state a material fact may be liable to shareholders for rescission or damages.[13] Further, a bank or thrift may be liable if it commits a breach of fiduciary duty in connection with its receipt of compensation from an investment company that it advises.[14]

[1] *See,* e.g., CNA Management Corporation (pub. avail. Nov. 29, 1974) (staff letter objecting to use of "Mutual Savings Fund"); Wright Investors' Service (pub. avail. March 14, 1974) (staff letter objecting to use of

"Savings"); National Securities & Research Corporation (pub. avail. Jan. 21, 1974) (staff letter objecting to use of "Savest"); Ben Franklin Thrift Shares, Incorporated (pub. avail. Sept. 1, 1973) (staff letter objecting to use of "Thrift").

[2] *See* Letter from William R. McLucas, Director, Division of Enforcement, and Gene A. Gohlke, Acting Director, Division of Investment Management, to Registrants, October 25, 1990.

[3] *See* Letter from Carolyn B. Lewis, Assistant Director, Division of Investment Management, to Registrants (Feb. 22, 1993).

[4] *See* Rule 8b-20 under the 1940 Act, 17 CFR 8b-20 (investment company registration statement or report required to include material information in addition to that expressly required if necessary to make the required statements not misleading); Rule 408 under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.408 (any registration statement required to include material information in addition to that expressly required if necessary to make the required statements not misleading); *see* also Section 10(c) of the 1933 Act, 15 U.S.C. 77j(c) (Commission authorized to adopt rules requiring any prospectus to provide such additional information as necessary or appropriate in the public interest or for protection of investors).

[5] *See*, e.g., Rule 134 under the 1933 Act, 17 CFR 230.134 ("tombstone" advertisements); Rule 482 under the 1933 Act, 17 CFR 482 ("omitting prospectus" advertising); Rule 34b-1 under the 1940 Act, 17 CFR 270.34b-1(investment company sales literature).

[6] The Division recently compiled the attached list of bank-related investment companies with names similar to the bank.

[7] Sections 3(a)(4) and 3(a)(5) of the Exchange Act exclude banks, as defined in Section 3(a)(6), from the definitions of "broker" and "dealer." See Sections 3(a)(4), 3(a)(5), and 3(a)(6) of the Exchange Act, 15 U.S.C. 78c(a)(4) - 78c(a)(6) (defining "broker," "dealer," and "bank").

[8] In a "networking" or "kiosk" arrangement, a broker-dealer agrees to provide securities services to the customers of a financial institution on the premises of that institution in exchange for a percentage of the commissions earned.

[9] Letter from Richard C. Breeden, Chairman, Securities and Exchange Commission, to John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (February 19, 1993) (enclosing memorandum)

[10] The SROs, for example, recently announced a plan to develop a single continuing education program for all securities industry registered representatives and principals. *See 7 NASD Regulatory & Compliance Alert,* No . 1 (March, 1993). The National Association of Securities Dealers, Inc. also has implemented initiatives designed to alert broker-dealers to their disclosure obligations when recommending that investors reinvest the proceeds of certificates of deposit in securities, such as bond funds and collateralized mortgage obligations. *See*, e.g., *NASD Notice to Members,* No. 91-4 (November, 1991).

[11] The staff has reviewed its files and has not found any investor complaints alleging confusion between mutual fund investments and insured bank deposits.

[12] *See* Rule 10b-5 under the Exchange Act, 17 CFR 240.10b-5 (general antifraud provision in connection with purchase or sale of securities).

[13] *See* Section 12(2) of the 1933 Act, l5 U.S.C. 771(2) (liability for use of misleading prospectus or oral communication in connection with sale of a security).

[14] *See* Section 36(b) of the 1940 Act, 15 U.S.C. 80a-35(b) (breach of fiduciary duty by investment adviser to investment company in connection with compensation received by adviser).

Appendix E: Insurance Consumer Protections

The OCC adopted regulations that implement section 305 of the GLBA, "Insurance Consumer Protections." National banks and FSAs must comply with the insurance consumer protection rules published at 12 CFR 14. These regulations apply to retail sales practices, solicitations, advertising, or offers of any insurance or annuity product by a depository institution, or any person that is engaged in such activities at an office of the institution or on its behalf. These requirements are relevant to a bank's RNDIP sales programs because annuities, both variable and fixed rate, are commonly offered through bank distribution channels. The "Insurance Activities" booklet of the *Comptroller's Handbook* provides further guidance on the insurance-related activities of banks.

The regulations at 12 CFR 14 apply to "covered persons." A covered person includes a bank; a person who sells, solicits, advertises, or offers an insurance product or annuity to a consumer at an office of the bank; or a person who sells, solicits, advertises, or offers an insurance product or annuity to a consumer on behalf of the bank. To determine compliance with this rule, a consumer is an individual who purchases, applies to purchase, or is solicited to purchase from a covered person insurance products or annuities primarily for personal, family, or household purposes. Small businesses are not consumers under this regulation. An office is the premises of a bank where retail deposits are accepted from the public.

A person is acting on behalf of the bank when

- the person represents that the sale is on behalf of the bank;
- the bank refers a customer to a seller of insurance, and the bank has a contractual relationship to receive commissions or fees derived from the sale of an insurance product or annuity resulting from that referral; or
- documents evidencing the sale, solicitation, advertising, or offer of the insurance product or annuity identify or refer to the bank.

The rules prohibit misrepresentation. Banks often disseminate information to bank customers and the general public describing insurance and annuity products that are available from the bank, its subsidiaries or affiliates, or unaffiliated third parties. Banks also communicate with their customers about how to obtain more information on insurance and annuity products. For a bank to comply with 12 CFR 14, these communications must not suggest or convey any inaccurate information and should be designed with care to avoid misunderstanding, confusion, or misrepresentation to the bank's customers. Covered persons, including banks, may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief regarding

- the uninsured nature of any insurance product or annuity offered for sale.
- the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value for an insurance product or annuity that involves investment risk.

- the fact that the approval of an extension of credit (when insurance products or annuities are sold or offered for sale) may not be conditioned on the purchase of an insurance product or annuity from the bank or its affiliates and that the consumer is free to purchase the product from another source.

The rule prohibits domestic violence discrimination. A covered person may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the decision-making criterion considers the applicant's or insured's status as a victim of domestic violence or as a provider of services to victims of domestic violence. The prohibition applies to decisions with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under state law.

The rule also requires the following affirmative disclosures, except when the disclosures would not be accurate:

- In connection with the initial purchase of an insurance product or annuity, the following disclosures must be provided orally and in writing before completion of the initial sale to the consumer:
  - The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank.
  - The insurance product or annuity is not insured by the FDIC or any other agency of the United States, the bank, or an affiliate of the bank.
  - In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.
- In connection with an application for credit in which an insurance product or annuity is solicited, offered, or sold, banks must disclose that the bank may not condition an extension of credit on either
  - the consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or
  - the consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

In most cases, these disclosures must be made orally and in writing at the time the consumer applies for an extension of credit associated with an insurance product or annuity that is solicited, offered, or sold. There are various exceptions to this requirement for mail, telephone, and electronic transactions.

- Mail—Oral disclosures are not required if the sale of the insurance product or the application for credit is taken by mail.
- Telephone—If the sale is conducted by telephone, a covered person may provide the written insurance disclosures by mail within three business days beginning on the first business day after the sale. A covered person may also provide the written credit disclosure by mail if the covered person mails the disclosure to the consumer within three days beginning the first business day after the credit application is taken.

- Electronic disclosures—A covered person may provide the written insurance and credit disclosures through electronic media if the customer affirmatively consents to receiving the disclosures electronically, and the consumer can download the disclosures in a form that can be retained later, such as by printing or storing electronically.

All disclosures must be readily understandable and meaningful. Disclosures must be conspicuous, simple, and direct, and designed to call attention to the nature and significance of the information provided. Examples of meaningful disclosures include plain language headings, easy-to-read typeface and type-size, wide margins, boldface or italics for key words, and distinctive type styles. Disclosures are not meaningfully provided in an electronic context if the consumer can bypass the visual text of the disclosures before purchasing the product.

Certain short form disclosures may be used in visual media and, as appropriate, in other circumstances. For example, a covered person may use the following disclosures in visual media:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE BANK
- MAY GO DOWN IN VALUE

Banks must also obtain written acknowledgment from the consumer that he or she received the required disclosures. The acknowledgment must be received at the time the consumer receives the disclosures or before the initial sale.

A bank must, to the extent practicable, keep the area where it conducts its insurance and annuities transactions physically segregated from areas where retail deposits are routinely accepted from the general public. In addition to physical segregation, the rule also requires the bank to identify the areas where the sales activity occurs and to distinguish those areas from the areas where the bank's retail deposit-taking activities occur. (The area where retail deposits are routinely accepted generally means traditional teller windows and teller lines.)

Any person accepting deposits from the public, in an area where such transactions are routinely conducted in the bank, may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product. If the bank has a referral fee program, the referral fee paid to this person may not be more than a one-time, nominal fee of a fixed dollar amount that does not depend on whether the referral results in a transaction.

Appendix F: Margin Lending and Related Securities Lending

This section provides additional information on a bank's or broker-dealer's provision of margin and securities lending services to RNDIP customers. A bank may extend credit through arrangements with affiliated or unaffiliated broker-dealers, directly or indirectly, to retail customers for the purpose of purchasing or carrying certain securities.

Regulatory Requirements

12 CFR 221, "Credit by Banks and Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock (Regulation U)," imposes credit restrictions on lenders other than broker-dealers that extend credit for the purpose of buying or carrying margin stock if the credit is secured directly or indirectly by margin stock. Regulation U defines "margin stock" to include (1) any equity security registered on a national securities exchange; (2) any over-the-counter security trading on the National Market System; (3) any debt security convertible into a margin stock or carrying a warrant or right to subscribe to or purchase a margin stock; (4) any warrant or right to subscribe to or purchase a margin stock; and (5) most mutual funds.

National banks and FSAs are subject to Regulation U when they extend credit secured by margin stock. The Regulation U definition of "bank" relies on section 3(a)(6) of the Securities Exchange Act (15 USC 78c(a)(6)) and has always included national banks. Prior to the FSRRA, FSAs were not deemed "banks" under the Securities Exchange Act, and consequently, FSAs were considered nonbank lenders under Regulation U. Nonbank lenders are subject to registration and reporting requirements when certain threshold tests are met. Section 401 of the FSRRA amended the term "bank" in the Securities Exchange Act to include FSAs. The FRB now interprets Regulation U to hold FSAs to the same requirements as national banks.

Broker-dealers that provide such leverage are subject to 12 CFR 220, "Credit by Brokers and Dealers (Regulation T)," and FINRA Rules 4200–4240 that establish additional margin requirements for broker-dealers.

Margin Basics

A retail brokerage customer may purchase securities and pay for the securities in full, or the customer may borrow part of the purchase price from a bank, or more commonly from a brokerage firm. At the time a brokerage account is opened, retail customers may request a margin account, or in many instances, the broker automatically opens a margin account for the customer. Customers that do not want to trade on margin should open a cash account. Some securities (such as privately offered hedge funds and MMMFs) cannot be purchased on margin, which means they must be purchased in a cash account where the customer must deposit 100 percent of the purchase price.

If the customer elects to borrow funds for the securities purchase, the portion of the securities' purchase price that the customer must deposit in the margin account is called

"margin" and is the customer's initial equity in the account. The margin loan is secured by the securities being purchased, and the customer is responsible for meeting margin requirements, repaying the loan, and paying interest on the borrowed funds for the period that the loan is outstanding.

Minimum margin requirements are established by the FRB, FINRA, and the securities exchanges. Most brokerage firms establish their own "house requirements" that exceed the regulatory minimum margin standards. There are specific margin requirements for certain trading strategies, such as short selling and day trading. Customers must satisfy the minimum margin, initial margin, and maintenance margin requirements imposed by regulations and any additional brokerage firm house requirements.

Minimum Margin

An investor opening a margin account must deposit cash or eligible securities to satisfy the minimum margin requirements established by the applicable regulators and the brokerage firm. Before purchasing a security on margin, FINRA Rule 4210 requires a customer to deposit cash or securities of at least $2,000 or 100 percent of the purchase price of the security, whichever is less, in the margin account.

Initial Margin

The initial margin requirement represents the amount of equity a customer needs in the margin account to be able to purchase a security using borrowed funds. In order to engage in a leveraged security purchase, the customer must pledge some amount of assets as collateral for the margin loan. Regulations T and U generally allow a brokerage firm or bank to lend a customer up to 50 percent of the total purchase price of a security (usually an equity security).

Maintenance Margin

Once the loan is extended, the bank or broker-dealer sets a maintenance margin requirement that determines for the customer when, and how much, additional cash or securities the customer has to pledge. The pledge amount varies as it depends on the price movement of the security the customer purchased. The margin maintenance requirement can be less than the initial margin requirement and varies based on the security and regulatory requirements, and the brokerage firm's internal guidelines. For example, FINRA's maintenance margin requirement is a minimum of 25 percent of a security's market value that was purchased on margin.[57] If the borrowed security falls in value, the customer is required to pledge additional funds to offset the decline in their equity investment. If the security rises in value, the customer realizes additional value in his or her holdings and does not need to pledge any additional collateral. Banks and brokerage firms may establish higher margin maintenance requirements.

[57] Refer to FINRA Rule 4210 (c), "Maintenance Margin."

FINRA's margin guidance provides the following example. If a customer buys $100,000 of securities on day one, Regulation T requires the customer to deposit a margin of 50 percent, or $50,000, in payment for the securities. As a result, the customer's equity in the margin account is $50,000, and the customer has received a margin loan of $50,000 from the firm. Assume that on day two the market value of the securities falls to $60,000. Under this scenario, the customer's margin loan from the firm remains at $50,000, and the customer's account equity falls to $10,000 ($60,000 market value less $50,000 loan amount). The minimum maintenance margin requirement for the account is 25 percent, however, meaning that the customer's equity must not fall below $15,000 ($60,000 market value multiplied by 25 percent). Since the required equity is $15,000, the customer would receive a maintenance margin call for $5,000 ($15,000 less existing equity of $10,000). Because of the way the margin rules operate, if the firm liquidates securities in the account to meet the maintenance margin call, the firm would need to liquidate $20,000 of securities.

Margin Maintenance Risk Management

A bank extending margin credit or using a broker-dealer that provides such leverage should determine whether appropriate policies and procedures are implemented that meet applicable regulatory requirements as well as providing for effective risk management. Margin risk management should include implementing effective systems for setting margin requirements. These systems should determine whether margin setting, at a minimum, meets the requirements in Regulation U or Regulation T, as applicable. Higher margin requirements should be considered for securities with less liquidity and greater price variability, issues in certain sectors, and customers holding concentrated positions. Intraday position monitoring should be an important component of a bank's margin requirements to reduce the potential for losses, particularly during periods of high volatility.

Effective maintenance margin setting and monitoring are key aspects of the risk mitigation associated with margin lending. In setting and monitoring margin requirements, the broker-dealer or bank should assess the

- historical and forecasted price volatility of the securities pledged to collateralize the margin loan.
- riskiness of the sector and whether the sector or an individual holding is potentially vulnerable to an idiosyncratic event that would cause the collateral to quickly lose value.
- diversification and lack of price correlation of a customer's securities that are used for margin.
- concentrations of risk across customers' portfolios that margin similar securities.
- liquidity of the margin collateral.
- stress testing results on margin positions.

In general, the lower the price volatility of the margined security and the greater the amount and diversity of the other assets held in a customer's margin account, the lower the maintenance margin needs to be to reflect the perceived lower risk of loss. Higher margins are warranted as risk increases. The greater the price volatility, the more concentrated the

sector holdings, and the less favorable the stress test results, the higher the corresponding margin requirements.[58]

A bank should conduct concentration analysis and monitoring both from the perspective of individual customer holdings as well as the bank's aggregate exposure across all margin accounts. A bank's assessment of the other assets that a margin customer holds in his or her margin account is essential to loss mitigation. If other assets back a customer's margin account and are diversified, the risk of credit loss typically declines as those assets can normally be used to cover margin calls. However, if the other assets are highly correlated to the margined security, their collateral coverage may not provide ample protection as the total holdings may decline in value. Asset correlation and volatility should be considered when setting margin requirements. Aggregate exposures of margined securities across customer accounts should be evaluated and monitored. A bank should have an effective process to identify the aggregate exposure of similar securities among margin accounts with a particular focus on concentrated positions, greater price volatility, and those vulnerable to idiosyncratic risk or liquidity risk.

Stress testing margin exposures is also important. A broker-dealer or bank typically identifies its top 10, 20, or 25 exposures to run stress tests based on key factors, such as increasing volatility or correlations. The purpose of the stress tests is to affirm the level of the maintenance margin for individual securities and, if the stress scenarios indicate a need to do so, to raise the maintenance margin level.

Creditworthiness and Counterparty Monitoring

The main counterparty in the margin lending transaction is the retail brokerage customer. The creditworthiness of the customer should be evaluated along with the securities analysis previously discussed. Broker-dealers fulfilling customer requests for margin borrowing often engage in a securities lending or borrowing transaction to finance the margin loan. This financing involves counterparties, such as other broker-dealers or banks. Effective counterparty credit risk management is vital in assessing a counterparty's financial strength, ~~reputation,~~ and collateral coverage.

Understand the Oversight Structure

A bank's oversight structure of its margin lending function is critical to ensuring adequate risk oversight. Risk management should be independent of the individuals who run the margin lending function. Risk management should also have an active voice in terms of approving exceptions, participating in regular meetings, and reviewing key MIS produced in conjunction with margin lending. Ideally, risk management should be provided the authority to question and override practices that could be considered unsafe or unsound.

[58] Note that the initial and maintenance margin requirements are subject to change and that the Federal Reserve Act and FINRA regulations that govern this area should be consulted.

Risk Culture

Management of the margin lending business should be able to explain the organization's risk culture, including its risk appetite, risk tolerance levels, risk preferences, and adherence to risk direction as approved by the board. Management should adhere to the risk approach set by the board, or explain why management is deviating from that approach.

Exception Approval of Maintenance Margin

In certain cases, customers are not held to a maintenance margin level that is prescribed by the broker-dealer or bank and that exceeds the regulatory requirements. These are usually one-off events, and a bank should have an established process in place that delineates why the exception is being made, who is approving it, the reasons for the exception, and the circumstances under which the exception no longer applies.

Appendix G: Retail Foreign Exchange Transactions—12 CFR 48

Dodd–Frank amendments to the CEA forbid banks from engaging in certain off-exchange transactions in foreign currency with retail customers (retail forex transactions) as of July 16, 2011, except pursuant to an OCC rule authorizing the transaction. The OCC adopted 12 CFR 48 authorizing banks and their operating subsidiaries to engage in this activity. The rule establishes various requirements banks must comply with to conduct such transactions.

A retail forex transaction is defined in 12 CFR 48.2 and means an agreement, contract, or transaction in foreign currency that is offered and entered into by a bank with a person that is not an ECP. Identified banking products, including deposit accounts, CDs, and loans, are not retail forex transactions. A retail forex transaction includes

- a future or option on such a future.
- options not traded on a registered national securities exchange.
- certain leveraged, margined, or bank-financed transactions, including rolling spot forex transactions (so-called "Zelener" contracts).

Certain transactions in foreign currency are not retail forex transactions. These include

- spot transactions in which one currency is bought for another and the two currencies are exchanged within two days.
- certain forwards.
- transactions conducted through an exchange, because in those cases the exchange would be the counterparty to both the bank and the retail forex customer, rather than the bank directly facing the retail forex customer. Note that an electronic trading platform is not an exchange.

A forex forward that is not leveraged, margined, or financed by the bank is not included in the definition. However, a leveraged, margined, or bank-financed forex forward is a retail forex transaction unless

- it creates an enforceable obligation to deliver between a seller and a buyer, and each can deliver and accept delivery, respectively, in connection with its line of business; or
- the OCC determines that the forward is not functionally or economically similar to a forex future or option.

Regulation 12 CFR 48 contains a provision that allows the OCC to exempt specific transactions or kinds of transactions from the "retail forex transaction" definition.

A retail forex customer is defined in 12 CFR 48.2 and means a customer that is not an ECP. Generally, retail forex customers are

- individuals with $10 million or less in discretionary investments.

- companies (e.g., a corporation, partnership, proprietorship, organization, trust, or other entity) other than financial institutions, insurance companies, and investment companies, with $10 million or less in total assets, or a net worth of $1 million or less if entering into the transaction in connection with the conduct of their business or to manage risk.
- certain unregulated commodity pools with non-ECP participants.

ECP is defined in the CEA at 7 USC 1a(18), and for purposes most relevant to this rule generally includes

- a bank and its similarly regulated affiliates and subsidiaries.
- a regulated insurance company.
- a broker-dealer.
- a futures commission merchant.
- a registered investment company or foreign equivalent.
- a commodity pool operated by a CFTC registrant that has
  - total assets exceeding $5,000,000; and
  - no investors that are not ECPs.
- a corporation, partnership, proprietorship, organization, trust, or other entity that has
  - total assets exceeding $10,000,000; or
  - a net worth exceeding $1,000,000, and enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owed or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business.
- an EB plan subject to ERISA, a governmental EB plan, or foreign equivalent plan
  - that has total assets exceeding $5,000,000; or
  - the investment decisions of which are made by a regulated investment manager (e.g., an investment adviser, commodity trading adviser, bank, trust company, or insurance company); or
- a governmental entity.

As required by the CEA, the retail forex rule includes requirements for conducting retail forex transactions with respect to disclosure, recordkeeping, capital and margin, reporting, business conduct, and documentation. Banks engaged in retail forex transactions must be well capitalized. The requirements are similar to the CFTC rule 17 CFR 5 governing retail forex transactions by CFTC registrants. For more information, refer to12 CFR 48.

A bank engaging in or planning to engage in retail forex transactions is required under 12 CFR 48.4 to provide the OCC with prior notice and obtain from the OCC a written supervisory nonobjection. For a bank to obtain a supervisory nonobjection to engage in retail forex transactions, the bank must

- establish and implement to the satisfaction of the OCC written policies, procedures, and risk measurement and management systems and controls that determine whether retail forex transactions are conducted in a safe and sound manner and in compliance with the rule.

- provide the OCC other such information as required. This required information may include customer due diligence, new product approvals, haircuts on noncash margin, and conflicts of interest.

A bank should send its retail forex supervisory nonobjection request and notice to the

- EIC (large and midsize banks);
- Director for International Bank Supervision (federal branches and agencies); or
- Appropriate Assistant Deputy Comptroller (community banks).

Appendix H: Consumer Protection for Senior Clients

Guidance for Consumers

"Financial Self-Defense for Seniors: Know the Red Flags and Avoid Financial Abuse," Certified Financial Planning Board of Standards, 2014.

"Money Smart for Older Adults: Prevent Financial Exploitation," CFPB and FDIC, June 2013.

Guidance for Regulated Firms

OCC Bulletin 2013-21, "Privacy Laws and Reporting Financial Abuse of Older Adults: Interagency Guidance," FRB, CFTC, CFPB, FDIC, Federal Trade Commission, National Credit Union Administration, OCC, and SEC, October 4, 2013.

"Senior Designations for Financial Advisers: Reducing Consumer Confusion and Risk," CFPB, April 18, 2013.

FINRA Regulatory Notice 11-52, "Senior Designations: FINRA Reminds Firms of Their Obligations Regarding the Supervision of Registered Persons Using Senior Designations," November 2011.

"Protecting Senior Investors: Compliance, Supervisory, and Other Practices Used by Financial Services Firms in Serving Senior Investors," SEC's Office of Compliance Inspections and Examinations, North American Securities Administrators Association, Financial Industry Regulatory Authority, September 22, 2008. "Protecting Senior Investors: Compliance, Supervisory, and Other Practices Used by Financial Services Firms in Serving Senior Investors" (2010 Addendum), August 12, 2010.

FINRA Regulatory Notice 08-27, "Misleading Communications About Expertise: The Obligation of Firms When Supervising Their Registered Representatives' Use of Marketing Materials to Establish Expertise," May 2008.

FINRA Regulatory Notice 07-43, "Senior Investors: FINRA Reminds Firms of Their Obligations Relating to Senior Investors and Highlights Industry Practices to Serve These Customers," SEC's Office of Compliance Inspections and Examinations, North American Securities Administrators Association, Financial Industry Regulatory Authority, September 2007.

"Protecting Senior Investors: Report of Examinations of Securities Firms Providing 'Free Lunch' Sales Seminars," SEC's Office of Compliance Inspections and Examinations, North American Securities Administrators Association, Financial Industry Regulatory Authority, September 2007.

"Most Common Older Investor Scams," SEC, December 21, 2006.

Appendix I: Sample Request Letters

An examiner preparing for an RNDIP program examination should consider including the following information requests in the Request Letter. As detailed in the following sections, the sample information requests are divided into short and long sample Request Letters. These information requests should be tailored to match the scope of the examination and the bank's specific sales program.

Bank Information Request (Short Form)

- Brokerage services oversight committee minutes and reports
- A program management statement (may be incorporated in other board directives)
- Strategic plans and budgets for the area
- Financials pertaining to the business
- Policies and procedures
- Risk management reports used to monitor the business (could include compliance or audit reports and, mystery shopping findings)
- The written agreement between bank and broker
- The bank's product selection criteria and approved list
- Sales production reports
- The bank employee referral fee/incentive compensation program
- Bank employee associated training
- Consumer complaint, litigation, and settlement information
- Bank exception reports
- Bank advertisements and promotions (including the bank's website and mobile app)
- Securities regulators' reports, if available
- Insurance regulators' reports, if available (that cover fixed rate annuities)

Bank Information Request (Long Form)

1. **Bank Management Oversight**
   a. Current organizational charts for business, compliance, risk, and other control functions. Indicate whether key management personnel are bank or broker-dealer employees.
   b. Professional backgrounds of key personnel (e.g., education, certifications, years in industry, and years with the bank).
   c. Outline the committee structure for all committees with oversight over the bank's RNDIP sales program. Provide committee charters, minutes, and meeting packages of primary committees since (DATE).
   d. Copies of presentations, including meeting packages, to the board of directors or any committees of the board and to executive bank management made during (YEAR).
   e. Summary of regulatory reviews (DATE RANGE) of securities brokerage, insurance agency, and RIA activities that service the bank.
   f. Complete SSAE 16 report for the broker-dealer, insurance agency, and RIA third parties, if applicable.

2. **Policies and Procedures**
   a. Current program statement covering the bank's RNDIP sales program.
   b. Documentation indicating the board's most recent review and approval of the program statement.
   c. All policies and procedures relevant to the sales program.

3. **Strategic Plan and Financials**
   a. Year-end (DATE) financial statements with comparison to budget.
   b. Sales volume and revenue reports by product and branch.
   c. Strategic plan.

4. **Third-Party Risk Management of Broker-Dealers, Insurance Agents, and RIAs used in the RNDIP Sales Program**
   a. Description of the initial and ongoing third-party due diligence process.
   b. Written agreements between the bank and affiliated or unaffiliated third parties.
   c. The most recent MIS the third party provides bank management including sales production reports.
   d. Documentation to establish compliance with affiliate transaction requirements, if a bank affiliate is used in the sales program.

5. **Staffing**
   a. List of RNDIP bank branch offices and locations.
   b. Provide the RNDIP supervisory structure. For each level within the structure, provide the number of associates, required industry designations and respective authorizations, product limitations, and whether the individual is a bank or broker-dealer employee.
   c. Describe the roles and responsibilities of personnel authorized to sell nondeposit investment products, including annuities and insurance products.
   d. Describe how oversight over dual employees' activities is conducted.
   e. Provide compensation plans for bank employees involved in brokerage activities. Include unlicensed bankers, referral fee programs, and incentive programs.
   f. Describe the bank sales campaigns or contests for brokerage referrals and business.
   g. Describe the training program in place, including key compliance elements and ad-hoc training for personnel engaged in the sale of investments and customer referral activities.

6. **Compliance and Risk Management Functions and Oversight**
   a. Provide the (YEAR) compliance plan and scope of compliance activities. Provide an overview of the (YEAR) compliance testing performed and the reports to management.
   b. List all compliance oversight reports currently generated with a description of what the report identifies.
   c. Describe the risk assessment process used to oversee sales practices.
   d. Identify bank officers and committees directly involved in supervising and monitoring sales practices.

e. Describe exception and surveillance reports used by bank management to monitor the sales program. Provide a sample of the reports.
f. Provide risk management reports and business line risk control self-assessments.
g. Describe the process used by compliance to monitor and test suitability or best interest standard, as applicable.
h. Describe the process used by the risk management function to monitor the RNDIP sales program. Provide reports used by risk management to monitor the sales program.
i. Describe the retail branch testing program. Provide summary reports indicating the scope of the review and findings. Provide any MIS reports that identify trends across OSJ and branch exams conducted. Include coverage of bank branches for testing of bank requirements.
j. Describe the process used to generate and review customer disclosures and marketing materials. Describe the role of compliance and legal in the review process.

7. Customer Complaints, Litigation, and Settlements

a. Description of the process used to handle, address, escalate, and monitor customer complaints. Provide recent bank management reports.
b. List of pending litigation and settlements. Provide a listing of settlements from (DATE) to present with a brief description of the cause for the litigation or arbitration.
c. Reports that analyze customer complaints, litigation, and settlements with identification of any trends and management's responses to issues.

8. Bank Products and Services

a. List of investment and insurance products and services offered.
b. Description of investment programs, account types, and associated fees.
c. Identification of new products and services added since (DATE).
d. Identification of the products and services removed from the RNDIP platform since (DATE).
e. Description of the new product approval process, including the related governance, product selection criteria, product fee assessments, and investor constraints.
f. Description of the ongoing due diligence process in monitoring retention or removal of RNDIPs.

9. Customer Disclosures, Account Information Materials, and Promotional Materials

a. Customer disclosures required by the bank, including but not limited to consumer protection, proprietary products, affiliate relationships, and privacy.
b. Current disclosures and marketing materials (e.g., account agreements, customer profiling tools, customer acknowledgment, switching and 1035 exchange letters, structured products, alternative investments, breakpoints, etc.).
c. Description of how customer disclosures and marketing materials are reviewed and generated.
d. Description of the role of compliance and legal in the review process.
e. Description of the process used to remove outdated or incorrect customer disclosures, customer information documents, and marketing materials.

f. Advertising and promotional materials used on bank premises or on behalf of the bank.

10. Internal Audit Function

a. The internal audit plan that covers the bank's RNDIP sales program.
b. Copies of the internal audit reports for the RNDIP sales program for (DATES) and related action plans.

11. GLBA and Regulation R Compliance

a. List and details on the GLBA statutory exceptions or Regulation R exemptions that the bank utilizes in its RNDIP sales program.
b. Networking
   i. Networking agreements with registered brokers that offer brokerage services either on or off bank premises.
   ii. Incentive and compensation plans as they relate to the performance of securities transactions and activities for bank employees.
   iii. Referral plans for referrals by bank employees to the broker-dealer.
   iv. Advertising and promotional materials used by the bank during (specific time frame) to inform customers about the brokerage products and services.
   v. Associated disclosures provided to customers.
c. Sweep Services and Money Market Fund Transactions
   i. Description of the sweep services provided by the business line.
   ii. List of the GLBA statutory exceptions or Regulation R exemptions that the bank utilizes.
   iii. List of the money market funds available and prospectuses. Discuss the fees charged to the customer, the nature of the fees, and how service or maintenance fees are assessed.
   iv. Description of the nature of money market fund transactions conducted on behalf of customers or other banks.
d. Risk and Control
   i. Changes to the bank's regulatory risk assessment as it relates to the GLBA and Regulation R. Identify the individuals and areas responsible for changes.
   ii. Changes to the regulatory risk assessment testing modules as it relates to the GLBA and Regulation R and the frequency of performing these tests.
e. Compliance
   i. The compliance plan. Discuss changes to compliance systems to determine compliance with the GLBA and Regulation R.
   ii. Description of the recordkeeping systems used to demonstrate compliance with the GLBA/Regulation R.
   iii. Description of how changes to current processes as a result of the GLBA and Regulation R are communicated to employees. Provide training decks or internal communication memos.
f. Internal Audit
   i. The internal audit program that audits the bank's compliance with the GLBA and Regulation R.
   ii. Description of the scope and depth of internal audit coverage of GLBA and Regulation R compliance.

Appendix J: List of Abbreviations

ABA	American Bankers Association
AML	anti-money laundering
ATM	automated teller machine
BSA	Bank Secrecy Act of 1970
CDSC	contingent deferred sales charge
CEA	Commodity Exchange Act of 1936
CFPB	Consumer Financial Protection Bureau
CFR	Code of Federal Regulations
CFTC	U.S. Commodity Futures Trading Commission
CRS	customer relationship summary
Dodd–Frank	Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010
EB	employee benefit
ECP	eligible contract participant
EIC	examiner-in-charge
ERISA	Employee Retirement Income Security Act of 1974
ETF	exchange traded fund
FCRA	Fair Credit Reporting Act of 1970
FDIC	Federal Deposit Insurance Corporation
FFIEC	Federal Financial Institutions Examination Council
FINRA	Financial Industry Regulatory Authority
FRA	functionally regulated affiliate
FRB	Board of Governors of the Federal Reserve System
FSA	federal savings association
FSRRA	Financial Services Regulatory Relief Act of 2006
GLBA	Gramm–Leach–Bliley Act of 1999
HNW	high net worth
HOLA	Home Owners' Loan Act of 1933
ICQ	Internal Control Questionnaire
Interagency Statement	Interagency Statement on Retail Sales of Nondeposit Investment Products
IRA	individual retirement account
Joint Interpretations	Joint Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products
KRI	key risk indicator
MIS	management information systems
MMMF	money market mutual fund
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Assets Control
OSJ	Office of Supervisory Jurisdiction
OTS	Office of Thrift Supervision
REIT	real estate investment trust
RIA	registered investment adviser
RNDIP	retail nondeposit investment product

ROE	report of examination
SEC	U.S. Securities and Exchange Commission
SIDD	separately identified division or department
SIPC	Securities Investor Protection Corporation
SRO	self-regulatory organization
structured CD	structured certificates of deposit
USC	U.S. Code

References

Laws

12 USC 24(Seventh), "Corporate Powers of Associations"
12 USC 161, "Reports to Comptroller of the Currency"
12 USC 371c, 12 USC 371c-1, "Banking Affiliates and Restrictions on Transactions With Affiliates"
12 USC 1464(c), "Federal Savings Associations, Loans and Investments"
12 USC 1464(q), "Federal Savings Associations, Tying Arrangements"
12 USC 1464(v), "Federal Savings Associations, Reports of Condition"
12 USC 1467a(n), "Regulation of Holding Companies, Tying Restrictions"
12 USC 1831c(f), "Assuring Consistent Oversight of Subsidiaries of Holding Companies; Coordination Among Appropriate Federal Banking Agencies"
12 USC 1971, "Tying Arrangements, Definitions"
12 USC 1972, "Certain Tying Arrangements Prohibited; Correspondent Accounts"
15 USC 78c(a)(4)(B)(i)(IX), "Definitions and Application"
Securities Exchange Act of 1934 (section 3(a)(4)(B)(i))
Gramm–Leach–Bliley Act of 1999
Investment Advisers Act of 1940
Investment Company Act of 1940
Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010
Employee Retirement Income Security Act of 1974
Commodity Exchange Act of 1936
Financial Services Regulatory Relief Act of 2006

Regulations

12 CFR 7.1002, "National Bank and Federal Savings Association Acting as Finder"
12 CFR 7.1030, "Permissible Derivatives Activities for National Banks"
12 CFR 7.3001, "Sharing National Bank or Federal Association Space and Employees"
12 CFR 7.5010, "Shared Electronic Space"
12 CFR 9, "Fiduciary Activities of National Banks"
12 CFR 12, "Recordkeeping and Confirmation Requirements for Securities Transactions"
12 CFR 14, "Consumer Protection in Sales of Insurance"
12 CFR 21, "Bank Secrecy Act/Anti-Money Laundering"
12 CFR 30, "Safety and Soundness Standards"
12 CFR 48, "Retail Foreign Exchange Transactions"
12 CFR 101, "Covered Savings Associations"
12 CFR 150, "Fiduciary Powers of FSAs"
12 CFR 151, "Recordkeeping and Confirmation Requirements for Securities Transactions"
12 CFR 155, "Electronic Operations of Federal Savings Associations"
12 CFR 163.27, "Advertising"
12 CFR 163.36, "Tying Restriction Exception" applicable to FSAs"
12 CFR 163.76, "Offers and Sales of Securities at an Office of an FSA"

12 CFR 163.172, "Financial Derivatives"
12 CFR 163.180, "Suspicious Activity Reports and Other Reports and Statements"
12 CFR 208.34, FRB, "Recordkeeping and Confirmation of Certain Securities Transactions Effected by State Member Banks"
12 CFR 215, FRB, "Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (Regulation O)"
12 CFR 218, FRB, "Exceptions for Banks From the Definition of Broker in the Securities Exchange Act of 1934 (Regulation R)"
12 CFR 220, FRB, "Credit by Brokers and Dealers (Regulation T)"
12 CFR 221, FRB, "Credit by Banks and Persons Other Than Brokers or Dealers for the Purpose of Purchasing or Carrying Margin Stock (Regulation U)"
12 CFR 223, FRB, "Transactions Between Member Banks and Their Affiliates (Regulation W)"
12 CFR 223, FRB, "Transaction Between Member Banks and Their Affiliates (Regulation W)"
12 CFR 224, FRB, "Borrowers of Securities Credit (Regulation X)"
12 CFR 225.7, FRB, "Exceptions to Tying Restrictions (Regulation Y)"
12 CFR 328, FDIC, "Advertisement of Membership"
12 CFR 328.3(e), FDIC, "Official Advertising Statement Requirements, Restrictions on Using the Official Advertising Statement When Advertising Non-Deposit Products"
12 CFR 328.102(a)(3)(i), "Prohibition; Use of the FDIC Name or Logo"
12 CFR 344, FDIC, "Recordkeeping and Confirmation Requirements for Securities Transactions"
12 CFR 360, FDIC, "Resolution and Receivership Rules"
12 CFR 360.8 (e), FDIC, "Method for Determining Deposit and Other Liability Account Balances at a Failed Insured Depository Institution, Disclosure Requirements"
12 CFR 1016, CFPB, "Privacy of Consumer Financial Information (Regulation P)"
12 CFR 1022, CFPB, "Fair Credit Reporting (Regulation V)"
12 CFR 1030, CFPB, "Truth in Savings (Regulation DD)"
17 CFR 5, CFTC, "Off-Exchange Foreign Currency Transactions"
17 CFR 23, CFTC, "Swap Dealers and Major Swap Participants,"
17 CFR 240.15l-1, SEC, "Regulation Best Interest"
17 CFR 247, SEC, "Regulation R—Exemptions and Definitions Related to the Exceptions for Banks From the Definition of Broker"
26 CFR 1.1035-1, IRC, "Certain Exchanges of Insurance Policies"

Federal Register

84 Fed. Reg. 33318–33491, "Regulation Best Interest: The Broker-Dealer Standard of Conduct"
34 Fed. Reg. 77617, "Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants"

Comptroller's Handbook

Examination Process
"Bank Supervision Process"
"Community Bank Supervision"
"Federal Branches and Agencies Supervision"
"Foreword"
"Large Bank Supervision"

Safety and Soundness
"Corporate and Risk Governance"
"Insurance Activities"
"Internal and External Audits"
"Model Risk Management"
"Related Organizations"

Asset Management
"Asset Management"
"Asset Management Operations and Controls"
"Investment Management Services"
"Personal Fiduciary Activities"
"Retirement Plan Products and Services"

Consumer Compliance
"Fair Credit Reporting"
"Privacy of Consumer Financial Information"

OTS Publications
"Office of Thrift Supervision (OTS) Examination Handbook"
OTS Thrift Bulletin 23a, "Sale of Securities"

OCC Issuances

Banking Circular 196, "FFIEC Supervisory Policy—Securities Lending"
OCC Bulletin 1994-13, "Nondeposit Investment Sales Examination Procedures: Interagency Statement"
OCC Bulletin 1995-20, "Tying Restrictions: Guidance on Tying" (national banks)
OCC Bulletin 1995-52, "Retail Sales of Nondeposit Investment Products: Clarification of Interagency Guidelines"
OCC Bulletin 2001-12, "Bank-Provided Account Aggregation Services: Guidance to Banks"
OCC Bulletin 2003-15, "Weblinking: Identifying Risks and Risk Management Techniques"
OCC Bulletin 2009-19, "Revision to FDIC Rule 12 CFR 360: New Notice Requirements for Sweep Accounts"
OCC Bulletin 2010-24, "Incentive Compensation: Interagency Guidance on Sound Incentive Compensation Policies"

OCC Bulletin 2011-12, "Sound Practices for Model Risk Management: Supervisory Guidance on Model Risk Management"
OCC Bulletin 2013-39, "Social Media: Consumer Compliance Risk Management Guidance: Final Supervisory Guidance"
OCC Bulletin 2017-7, "Third-Party Relationships: Supplemental Examination Procedures"
OCC Bulletin 2017-43, "New, Modified, or Expanded Bank Products and Services: Risk Management Principles"
OCC Bulletin 2019-31, "Covered Savings Associations Implementation: Covered Savings Associations"
OCC Bulletin 2019-37, "Operational Risk: Fraud Risk Management"
OCC Bulletin 2023-17, "Third-Party Relationships: Interagency Guidance on Risk Management"
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FFIEC, *Bank Secrecy Act/Anti-Money Laundering Examination Manual*

SEC Investor Bulletin, "Leveraged and Inverse Exchange Traded Funds: Specialized Products with Extra Risks for Buy-and-Hold Investors"

FINRA Rules and Notices
FINRA Rule 2111, "Suitability"
FINRA Rule 3160, "Networking Arrangements Between Members and Financial Institutions"
FINRA Rule 3280, "Private Securities Transactions of an Associated Person"
FINRA Rule 4200, "Margin"
FINRA Rule 4210, "Margin Requirements"
FINRA Member Notice 94-44, "Board Approves Clarification on Applicability of Article III, Section 40 of Rules of Fair Practice to Investment Advisory Activities of Registered Representatives"
FINRA Regulatory Notice 12-03, "Heightened Supervision of Complex Products"
FINRA Regulatory Notice 20-18, "FINRA Amends Its Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest"