

Thrift Bulletin

Handbooks: **Compliance Activities**
Thrift Activities

Subject: **Advertising, Oversight by the Board of Directors,
 and Capital Stock and Ownership**

Sections: 425
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June 23, 1993

Sales of Securities

Summary: OTS' recently issued Sales of Securities Regulation, 12 C.F.R. 563.76, generally prohibits the sale of all securities of savings associations or their affiliates in offices of the savings association. The Sales of Securities regulation provides a limited exception for the offer and sale of securities during mutual to stock conversions. This bulletin clarifies that other limited exceptions are permitted. This bulletin also provides further guidance on what directors and managers should do to ensure that permitted offers and sales are conducted in a safe and sound manner.

This bulletin rescinds and replaces Thrift Bulletin 23, which provided guidance for savings associations that sold their own, or an affiliate's debt securities in association offices before such sales were generally prohibited by the Sales of Securities regulation.

For Further Information Contact: Your Regional Office or the Policy Division of the Office of Thrift Supervision.

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General Policy

OTS does not consider the sales prohibitions in the Sales of Securities regulation applicable to the following transactions:

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

De Novo Offerings

Sales of securities by *de novo* (newly chartered) savings associations raise many of the same safety and soundness concerns addressed in section 563.76. Thus, when these securities sales are proposed to be conducted on the premises of a newly chartered association, even though the association may not yet be authorized to offer insured accounts, the sale should be conducted in accordance with the standards set forth in section 563.76.

Sales of Shares of Registered Investment Companies

In situations where an investment company is sponsored, advised, distributed or administered by a savings association, its holding company, or a subsidiary of the holding company, the related investment company may be treated as an affiliate of the association under certain regulations such as the transactions with affiliates regulations. As such, the shares issued by the investment company would be shares of an affiliate of the association. However, OTS will not treat a related registered investment company as an "affiliate" for purposes of the Sales of Securities regulation provided that any offers and sales of

the investment company's shares on the association's premises are conducted with safeguards comparable to those contained in section 563.76 and this bulletin. These safeguards are intended to ensure that customers do not confuse the uninsured shares of the investment company with insured products offered by the association and to maintain the separate corporate identities of the association and its affiliates.

Because of the unique safety and soundness concerns that may be presented by sales of these related investment company shares, savings associations should consult with their OTS Regional Office to review whether the association's current operations are consistent with the safety and soundness policies discussed above. Associations interested in initiating such sales should also consult with their OTS Regional Office before commencing such sales on the association's premises.

Securities sales by affiliates on savings association premises must also comply with applicable affiliated transactions regulations and fiduciary standards. This bulletin does not address those issues. (Refer to 12 C.F.R. Sections 563.41 and 563.42.)

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Waivers Pursuant to Sections 563g.14 and 563g.15

Although section 563.76 generally prohibits sales of association (and its affiliates) securities in the association's offices, the OTS may grant waivers for good cause on a case-by-case basis. The waiver request must demonstrate how regulatory concerns regarding customer confusion and conflicts of interest will be addressed, or that these concerns do not apply to the pertinent transaction.

The OTS Director or his designee will decide waiver requests. Any waiver granted will be subject, at a minimum, to the same safeguards and other requirements as those listed in the regulation. Waiver requests should be submitted to the OTS Applications Filing Room, 1700 G Street, NW, Washington, DC 20552. Copies of the request should be sent to the OTS Regional Office and the Deputy Chief Counsel, Corporate and Securities Division, at the same Washington address.

Responsibilities of Directors and Officers

Directors and officers bear primary responsibility for ensuring that sales of securities of an association or its affiliates in the association's offices comply with OTS regulatory requirements as well as any other applicable federal and state securities laws. The board of directors should ensure that policies and procedures are adopted and implemented by the association and its management to effect compliance with all applicable requirements in this area. Management bears primary responsibility for the day-to-day operations of the association and should take all necessary steps to ensure that these policies and procedures are followed.

Advertising

Thrift Bulletin 31-2, "Application of Securities Offering Rule to Materials for Offerings of Debt," dated August 31, 1989, provides guidance to issuers on acceptable advertising. Although this bulletin deals exclusively with debt offerings which now cannot be sold in association offices, the guidance is applicable to equity securities as well. (Refer to Thrift Bulletin 31-2 for more complete guidance.)

Customer "Suitability" Considerations

It is an unsafe and unsound practice if an association 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 association (or an affiliate) would not be an appropriate investment. For example, the "suitability" and "know your customer" standards of the National Association of Securities Dealers, Inc., provide that a seller shall not recommend to customers certain stock purchases unless the seller has reasonable grounds to believe:

- (1) that, on the basis of information that the customer furnishes, the recommended transaction is not unsuitable for the customer; and
- (2) that the customer may reasonably be expected to be capable of evaluating the risks of the recommended transaction and is financially able to bear the risks.

Safeguards

An association that sells its own securities, or those of an affiliate, in its offices should adopt and maintain

appropriate written safeguards for its protection and the protection of its customers, sellers (employees), directors, and officers. The safeguards may include, but are not limited to:

- Establishing a training program for employees selling the securities.
- Establishing minimum qualifications for retail sellers. For any sales made by non-association employees, the association should obtain written assurances from the broker dealer involved that sales in association offices will be made only by registered representatives of broker dealers subject to supervision under the federal securities laws.
- Adopting 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;
 - purchasers are informed as to the nature of the securities; and
 - based on reasonable inquiry, the investment is not unsuitable for purchasers with respect to their current income or investment needs.
- Providing sufficient supervision to prevent overly aggressive and persistent selling efforts.
- Designating an officer to be responsible for coordinating and supervising the association's

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compliance with its established safeguards, including monitoring or testing seller transactions.

- Ensuring that for any transaction taking place in offices of the savings association, customers sign the acknowledgment form required by

section 563.76 regarding their understanding that the security they are purchasing is not an insured account.



—John F. Robinson
Acting Deputy Director for
Washington Operations