

RESCINDED

178



Office of Thrift Supervision
Department of the Treasury

Scott M. Albinson
Managing Director

1700 G Street, N.W., Washington, DC 20552 • (202) 906-7984

This document and any attachments are superseded by OCC Bulletin 2007-42.

July 11, 2003

MEMORANDUM FOR: CHIEF EXECUTIVE OFFICERS

FROM:

Scott M. Albinson

Handwritten signature of Scott M. Albinson in black ink.

SUBJECT:

“Networking Arrangements”

Many savings associations provide their customers with nondeposit investment products. Nondeposit investment products, such as mutual funds, stocks, bonds, variable annuities, municipal bonds, mortgage-backed securities, or limited partnership interests are offered to savings association customers through third party brokerage arrangements, otherwise known as “networking” arrangements.

In accordance with previous OTS policy, some savings association have set up service corporations to contract with a broker dealer to offer nondeposit investment products and services. In other cases, in accordance with current OTS policy, the savings association is directly contracting with the broker dealer.

The Securities and Exchange Commission has informed OTS that it is issuing deficiency letters to broker dealers that have a networking contract with a service corporation of a savings association. The cause for the deficiency, under the Securities Exchange Act of 1934, is that the SEC considers a service corporation to be a “broker” itself when it contracts with a broker dealer to offer nondeposit investment products and services to a savings association’s customers. Thus, the service corporation and the broker dealer it contracts with, must both be established (registered) as a broker in order to offer these services to the savings association’s customers. In contrast, under Rule 15a-9, issued by the SEC on May 11, 2001, the SEC provides an exception that does not require a savings association to register as or be a broker if the savings association directly contracts with a registered broker dealer. The exception provided to savings associations under Rule 15a-9 does not extend to service corporations, unless savings associations are required by law or regulation to conduct networking activities in a service corporation. OTS no longer requires the use of a service corporation to engage in networking arrangements with a broker dealer.¹

Savings associations using a service corporation for networking arrangements should either:

- Replace the contract between the service corporation and the broker dealer with a contract between the savings association and the broker dealer.
- Register the service corporation as a broker dealer.

For Further Information Contact: Judi McCormick, OTS Trust Specialist, at (202) 906-5636.

¹ The powers of state-chartered savings associations are set forth under state law. If, under state law, a state-chartered savings association has authority to conduct networking activities directly the savings association should also follow the guidance set forth below.