

Comptroller of the Currency, Treasury

§ 14.10

bank trust department, the interpretation in this section shall be applied to the agent.

(h) A determination of capability to evaluate investment risk independently will depend on an examination of the customer's capability to make its own investment decisions, including the resources available to the customer to make informed decisions. Relevant considerations could include:

(1) The use of one or more consultants, investment advisers, or bank trust departments;

(2) The general level of experience of the institutional customer in financial markets and specific experience with the type of instruments under consideration;

(3) The customer's ability to understand the economic features of the security involved;

(4) The customer's ability to independently evaluate how market developments would affect the security; and

(5) The complexity of the security or securities involved.

(i) A determination that a customer is making independent investment decisions will depend on the nature of the relationship that exists between the bank and the customer.

Relevant considerations could include:

(1) Any written or oral understanding that exists between the bank and the customer regarding the nature of the relationship between the bank and the customer and the services to be rendered by the bank;

(2) The presence or absence of a pattern of acceptance of the bank's recommendations;

(3) The use by the customer of ideas, suggestions, market views and information obtained from other government securities brokers or dealers or market professionals, particularly those relating to the same type of securities; and

(4) The extent to which the bank has received from the customer current comprehensive portfolio information in connection with discussing recommended transactions or has not been provided important information regarding its portfolio or investment objectives.

(j) Banks are reminded that these factors are merely guidelines that will be utilized to determine whether a bank has fulfilled its suitability obligation with respect to a specific institutional customer transaction and that the inclusion or absence of any of these factors is not dispositive of the determination of suitability. Such a determination can only be made on a case-by-case basis taking into consideration all the facts and circumstances of a particular bank/customer relationship, assessed in the context of a particular transaction.

(k) For purposes of the interpretation in this section, an institutional customer shall be any entity other than a natural person. In determining the applicability of the interpretation in this section to an institutional customer, the OCC will consider the dollar value of the securities that the institutional customer has in its portfolio and/or under management. While the interpretation in this section is potentially applicable to any institutional customer, the guidance contained in this section is more appropriately applied to an institutional customer with at least \$10 million invested in securities in the aggregate in its portfolio and/or under management.

PART 14—CONSUMER PROTECTION IN SALES OF INSURANCE

Sec.

14.10 Purpose and scope.

14.20 Definitions.

14.30 Prohibited practices.

14.40 What a covered person must disclose.

14.50 Where insurance activities may take place.

14.60 Qualification and licensing requirements for insurance sales personnel.

APPENDIX A TO PART 14—CONSUMER GRIEVANCE PROCESS

AUTHORITY: 12 U.S.C. 1 *et seq.*, 24(Seventh), 92, 93a, 1818, and 1831x.

SOURCE: 65 FR 75839, Dec. 4, 2000, unless otherwise noted.

§ 14.10 Purpose and scope.

(a) *General rule.* This part establishes consumer protections in connection

§ 14.20

12 CFR Ch. I (1–1–04 Edition)

with retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:

(1) Any national bank; or

(2) Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.

(b) *Application to operating subsidiaries.* For purposes of § 5.34(e)(3) of this chapter, an operating subsidiary is subject to this part only to the extent that it sells, solicits, advertises, or offers insurance products or annuities at an office of a bank or on behalf of a bank.

§ 14.20 Definitions.

As used in this part:

(a) *Affiliate* means a company that controls, is controlled by, or is under common control with another company.

(b) *Bank* means a national bank or a Federal branch, or agency of a foreign bank as defined in section 1 of the International Banking Act of 1978 (12 U.S.C. 3101, *et seq.*)

(c) *Company* means any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

(d) *Consumer* means 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.

(e) *Control* of a company has the same meaning as in section 3(w)(5) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(5)).

(f)(1) *Covered person* means:

(i) A bank; or

(ii) Any other person only when the person sells, solicits, advertises, or offers an insurance product or annuity to

a consumer at an office of the bank or on behalf of a bank.

(2) For purposes of this definition, activities on behalf of a bank include activities where a person, whether at an office of the bank or at another location sells, solicits, advertises, or offers an insurance product or annuity and at least one of the following applies:

(i) The person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the bank;

(ii) The bank refers a consumer to a seller of insurance products or annuities and the bank has a contractual arrangement to receive commissions or fees derived from a sale of an insurance product or annuity resulting from that referral; or

(iii) Documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity identify or refer to the bank.

(g) *Domestic violence* means the occurrence of one or more of the following acts by a current or former family member, household member, intimate partner, or caretaker:

(1) Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape, or sexual assault;

(2) Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

(3) Subjecting another person to false imprisonment; or

(4) Attempting to cause or causing damage to property so as to intimidate or attempt to control the behavior of another person.

(h) *Electronic media* includes any means for transmitting messages electronically between a covered person and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(i) *Office* means the premises of a bank where retail deposits are accepted from the public.