Comptroller of the Currency, Treasury

§ 13.100 Obligations concerning institutional customers.

(a) As a result of broadened authority provided by the Government Securities Act Amendments of 1993 (15 U.S.C. 78o-3 and 78o-5), the OCC is adopting sales practice rules for the government securities market, a market with a particularly broad institutional component. Accordingly, the OCC believes it is appropriate to provide further guidance to banks on their suitability obligations when making recommendations to institutional customers.

(b) The OCC’s suitability rule (§13.4) is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Banks’ responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Banks are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer.

(c) In recommending to a customer the purchase, sale, or exchange of any government security, the bank shall have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer as to the customer’s other security holdings and as to the customer’s financial situation and needs.

(d) The interpretation in this section concerns only the manner in which a bank determines that a recommendation is suitable for a particular institutional customer. The manner in which a bank fulfills this suitability obligation will vary, depending on the nature of the customer and the specific transaction. Accordingly, the interpretation in this section deals only with guidance regarding how a bank may fulfill customer-specific suitability obligations under §13.4.

(e) While it is difficult to define in advance the scope of a bank’s suitability obligation with respect to a specific institutional customer transaction recommended by a bank, the OCC has identified certain factors that may be relevant when considering compliance with §13.4. These factors are not intended to be requirements or the only factors to be considered but are...

[1] The interpretation in this section does not address the obligation related to suitability that requires that a bank have "a 'reasonable basis' to believe that the recommendation could be suitable for at least some customers." In the Matter of the Application of F.J. Kaufman and Company of Virginia and Frederick J. Kaufman, Jr., 50 SEC 364 (1989).