

(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

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14.40 What a covered person must disclose.

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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, 1462a, 1463, 1464, 1818, 1831x, and 5412(b)(2)(B).

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

(1) Any national bank or Federal savings association; or

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

(b) *Application to operating subsidiaries.* For purposes of § 5.34(e)(3) of this chapter for national banks and § 159.3(h) of this chapter for Federal savings associations, 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 national bank or Federal savings association, or

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on behalf of a national bank or Federal savings association.

[79 FR 28398, May 16, 2014]

### § 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;

(ii) A Federal savings association; or

(iii) 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 Federal savings association or on behalf of a bank or Federal savings association.

(2) For purposes of this definition, activities on behalf of a bank or Federal savings association include activities where a person, whether at an office of the bank or Federal savings association 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 or Federal savings association;

(ii) The bank or Federal savings association refers a consumer to a seller of insurance products or annuities and the bank or Federal savings association 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 or Federal savings association.

(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 or Federal savings association where retail deposits are accepted from the public.

(j) *Federal savings association* means a Federal savings association or Federal savings bank chartered under section 5

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of the Home Owners' Loan Act (12 U.S.C. 1464).

(k) *Subsidiary* has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28398, May 16, 2014]

### § 14.30 Prohibited practices.

(a) *Anticoercion and antitying rules.* A covered person may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) or section 5(q) of the Home Owners' Loan Act (12 U.S.C. 1464(q)), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank, Federal savings association, or any of their affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) *Prohibition on misrepresentations generally.* A covered person may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank, Federal savings association, or a subsidiary of the bank or Federal savings association that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by a covered person or any subsidiary of the bank or Federal savings association is not backed by the Federal government, the bank, or the Federal savings association, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC);

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank, Federal savings association, or subsidiary of the bank or Federal savings association at which insurance products or annuities

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are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank, Federal savings association, or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank, Federal savings association, or a subsidiary of the bank or Federal savings association; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) *Prohibition on 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 status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision 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.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28398, May 16, 2014]

### § 14.40 What a covered person must disclose.

(a) *Insurance disclosures.* In connection with the initial purchase of an insurance product or annuity by a consumer from a covered person, a covered person must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank, Federal savings association, or an affiliate of the bank or Federal savings association;

(2) The insurance product or annuity is not insured by the FDIC or any other agency of the United States, the bank, Federal savings association, or (if applicable) an affiliate of the bank or Federal savings association; and

(3) 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.

(b) *Credit disclosure.* In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, a covered person must disclose that the bank or Federal savings association may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank, Federal savings association, or any of their affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) *Timing and method of disclosures—*

(1) *In general.* The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) *Exception for transactions by mail.* If a sale of an insurance product or annuity is conducted by mail, a covered person is not required to make the oral disclosures required by paragraph (a) of this section. If a covered person takes an application for credit by mail, the covered person is not required to make the oral disclosure required by paragraph (b).

(3) *Exception for transactions by telephone.* If a sale of an insurance product or annuity is conducted by telephone, a covered person may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If a covered person takes an application for credit by telephone, the covered person may provide the written disclosure required by paragraph (b) of this section by mail, provided the covered person mails it to the consumer within three days beginning the first business day after the application is taken, exclud-

ing Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) *Electronic form of disclosures.* (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001(c)), a covered person may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosures required by paragraphs (a) or (b) of this section that are provided by electronic media are not required to be provided orally.

(5) *Disclosures must be readily understandable.* The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, a covered person may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

- NOT A DEPOSIT
- NOT FDIC-INSURED
- NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- NOT GUARANTEED BY THE [BANK] [FEDERAL SAVINGS ASSOCIATION]
- MAY GO DOWN IN VALUE

(6) *Disclosures must be meaningful.* (i) A covered person must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

- (A) A plain-language heading to call attention to the disclosures;
- (B) A typeface and type size that are easy to read;
- (C) Wide margins and ample line spacing;
- (D) Boldface or italics for key words; and

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(E) Distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) A covered person has not provided the disclosures in a meaningful form if the covered person merely states to the consumer that the required disclosures are available in printed material, but does not provide the printed material when required and does not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) *Consumer acknowledgment.* A covered person must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. A covered person may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, a covered person must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) *Advertisements and other promotional material for insurance products or annuities.* The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by

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the bank or Federal savings association.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28398, May 16, 2014]

### § 14.50 Where insurance activities may take place.

(a) *General rule.* A bank or Federal savings association must, to the extent practicable, keep the area where the bank or Federal savings association conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's or Federal savings association's retail deposit-taking activities occur.

(b) *Referrals.* Any person who accepts deposits from the public in an area where such transactions are routinely conducted in the bank or Federal savings association may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28399, May 16, 2014]

### § 14.60 Qualification and licensing requirements for insurance sales personnel.

A bank or Federal savings association may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

[65 FR 75839, Dec. 4, 2000, as amended at 79 FR 28399, May 16, 2014]

#### APPENDIX A TO PART 14—CONSUMER GRIEVANCE PROCESS

Any consumer who believes that any bank, Federal savings association, or any other

person selling, soliciting, advertising, or offering insurance products or annuities to the consumer at an office of the bank, Federal savings association or on behalf of the bank or Federal savings association has violated the requirements of this part should contact the Customer Assistance Group, Office of the Comptroller of the Currency, (800) 613-6743, 1301 McKinney Street, Suite 3450, Houston, Texas 77010-3031, or [www.helpwithmybank.gov](http://www.helpwithmybank.gov).

[79 FR 28399, May 16, 2014]

## PART 15 [RESERVED]

## PART 16—SECURITIES OFFERING DISCLOSURE RULES

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AUTHORITY: 12 U.S.C. 1 *et seq.* and 93a.

SOURCE: 59 FR 54798, Nov. 2, 1994, unless otherwise noted.

### § 16.1 Authority, purpose, and scope.

(a) *Authority*. This part is issued under the general authority of the national banking laws, 12 U.S.C. 1 *et seq.*, and the OCC's general rulemaking authority in 12 U.S.C. 93a.

(b) *Purpose*. This part sets forth rules governing the offer and sale of securities issued by a bank.

(c) *Scope*. This part applies to offers and sales of bank securities by issuers, underwriters, and dealers.

### § 16.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Accredited investor* means the same as in Commission Rule 501(a) (17 CFR 230.501(a)).

(b) *Bank* means an existing national bank, a national bank in organization, or a Federal branch or agency of a foreign bank.

(c) *Commission* means the Securities and Exchange Commission. When used in the rules, regulations, or forms of the Commission referred to in this part, the term "Commission" shall be deemed to refer to the OCC.

(d) *Dealer* means the same as in section 2(12) of the Securities Act (15 U.S.C. 77b(12)).

(e) *Exchange Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a through 78jj).

(f) *Insured depository institution* means the same as in section 3(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(2)).

(g) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

(h) *Issuer* means a bank that issues or proposes to issue any security.

(i) *Nonconvertible debt* means a general obligation of the bank, whether senior or subordinated, that is not convertible into any class of common or preferred stock or any derivative thereof.

(j) *OCC* means the Office of the Comptroller of the Currency.

(k) *Person* means the same as in section 2(2) of the Securities Act (15 U.S.C. 77b(2)) and includes a bank.

(l) *Prospectus* means an offering document that includes the information required by section 10(a) of the Securities Act (15 U.S.C. 77j(a)).

(m) *Registration statement* means a filing that includes the prospectus and other information required by section 7 of the Securities Act (15 U.S.C. 77g).

(n) *Sale, sell, offer to sell, offer for sale, and offer* mean the same as in section 2(3) of the Securities Act (15 U.S.C. 77b(3)).