Office of Thrift Supervision
Department of the Treasury

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June 2, 1998

MEMORANDUM FOR: Chief Executive Officers

FROM: Richard M. Riccobono

SUBJECT: Interagency Policy Statement on Repurchase Agreements

The Federal Financial Institutions Examination Council (FFIEC) revised the attached policy statement, "Repurchase Agreements of Depository Institutions With Securities Dealers and Others," and published it in the *Federal Register* (Vol. 63, No. 28) on February 11, 1998. The original policy statement was adopted by the federal banking regulatory agencies in 1986, but not by the Office of Thrift Supervision (OTS). OTS participated in the revision and is now adopting the policy statement.

The revision is part of a government-wide effort to update and streamline out-of-date regulations and policy statements. The primary changes were to:

- Update the document to conform with the Government Securities Act amendments of 1993;
- Delete obsolete and outdated sections and references; and
- Add a section "Other Laws and Regulations," to streamline and clarify the application of securities laws and lending limitations that apply to repurchase agreements.

The policy statement provides guidance to institutions that purchase securities from securities dealers and others under the terms of any agreement whereby the institution agrees to repurchase the securities at some future date. These transactions are generally considered the functional equivalent of making a secured loan. When such transactions are structured properly and fully secured by high quality, marketable securities, such as U.S. Treasury securities, they pose minimal risk to the purchasing institution.

Savings associations that engage in repurchase transactions must do so in a safe and sound manner and should adhere to OTS's lending limitations requirements (12 CFR Section 560.93), and the guidelines in the attached policy statement.

Attachment

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Repurchase Agreements of Depository Institutions With Securities Dealers and Others; Notice of Modification of Policy Statement

AGENCY: Federal Financial Institutions Examination Council (FFIEC).

ACTION: Modification of policy statement.

SUMMARY: FFIEC has modified its policy statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others (Policy Statement). The Policy Statement provides guidance to insured depository institutions about entering into repurchase agreements in a safe and sound manner. The FFIEC is making changes to the Policy Statement to eliminate outdated material, provide clarification, and to streamline the contents of the Policy Statement.

EFFECTIVE DATE: This Policy Statement is modified effective February 11, 1998.

FOR FURTHER INFORMATION CONTACT:

Federal Deposit Insurance Corporation (FDIC): William A. Stark, Assistant Director, Division of Supervision, (202) 898-6972; Kenton Fox, Senior Capital Markets Specialist, Division of Supervision, (202) 898-7119; Leslie Sallberg, Counsel, Legal Division (202)898-8876, FDIC, 550 17th Street N.W., Washington, D.C., 20429.

Office of Thrift Supervision (OTS): William J. Magrini, Senior Project Manager, Supervision Policy, (202) 906-5744; Vern McKinley, Attorney, Chief Counsel's Office, (202) 906-6241, OTS, 1700 G Street N.W., Washington, D.C., 20552.

Office of the Comptroller of the Currency (OCC): Joseph W. Malott, National Bank Examiner, Treasury and Market Risk, (202) 874-5670; Donald N. Lamson, Assistant Director, Securities and Corporate Practices, (202) 874-5210, OCC, 250 E Street, S.W., Washington, D.C., 20219.

Board of Governors of the Federal Reserve System (FRB): Michael Martinson, Deputy Associate Director, (202) 452-3640, Susan Meyers, Senior Securities Regulation Analyst, (202) 452-3626, Division of Banking Supervision and Regulation. FRB, 20th Street and Constitution Avenue, N.W., Washington, DC, 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Diane Jenkins (202) 452-3544.

SUPPLEMENTARY INFORMATION: FFIEC consists of representatives from the FDIC, OCC, FRB, OTS, and National Credit Union Administration (NCUA). FFIEC developed the Policy Statement to establish guidelines for insured depository institution repurchase agreement activities, including guidelines for written repurchase agreements, policies and procedures, credit risk management, and collateral management. FFIEC adopted the Policy Statement on October 21, 1985 (50 FR 49764, December 4, 1985), and the OCC, FRB, and FDIC each adopted the FFIEC's Policy Statement shortly thereafter. The OTS has not separately adopted the Policy Statement, but refers federal savings associations to the FFIEC version.

On November 14, 1997, FFIEC voted to make certain changes to the Policy Statement. First, the Policy Statement has been updated and streamlined to reflect the enactment of the Government Securities Act of 1986 and the Government Securities Act Amendments of 1993, 15 U.S.C. 78o-5 (GSA). The Policy Statement section, Dealings with Unregulated Securities Dealers, has been removed. The GSA established a regulatory structure for government securities dealers, making this section obsolete. A new section, Legal Requirements, has been added to the Policy Statement. The first subsection, Government Securities Regulations, presents general information on the requirements of the GSA.

Second, the Policy Statement has been updated to generally cover the other laws and regulations applicable to repurchase agreements. These include the antifraud provisions of the securities laws, the requirements of the Uniform Commercial Code, and lending limitations.

Third, the list of written repurchase agreement provisions has been updated with an expanded list of provisions to reflect current market practice. These provisions include terms of transaction initiation, confirmation and termination, payments and transfers of securities, collateral segregation, collateral repricing, rights to principal and interest payments, required disclosures for hold-in-custody repurchase agreements, and disclosures required by regulatory agencies.

In addition to the revisions to the Policy Statement previously described, minor changes to the Policy Statement have also been made to improve clarity and readability.

For these reasons, the FFIEC has modified the Policy Statement to read as follows. Each of the federal banking agencies will take appropriate action in connection with the modification of the Policy Statement.

Federal Financial Institutions Examination Council Supervisory Policy; Repurchase Agreements of Depository Institutions With Securities Dealers and Others

Purpose

Depository institutions and others involved with repurchase agreements [1] have sometimes incurred significant losses as a result of a default or fraud by the counterparty to the transaction. Inadequate credit risk management and the failure to exercise effective control over securities collateralizing the transactions are the most important factors causing these heavy losses.

The following guidelines are examples of elements that address credit risk management and exposure to counterparties under securities repurchase agreements and for controlling the securities in those transactions. Depository institutions that enter into repurchase agreements with securities dealers and others should consider these guidelines. Each depository institution that actively engages in repurchase agreements must have adequate policies and controls to suit their particular circumstances. The examining staffs of the federal supervisory agencies will review written policies and procedures of depository institutions to determine their adequacy

[1] The term "repurchase agreement" in this policy statement refers to both repurchase and reverse repurchase agreements. A repurchase agreement is one in which a party that owns securities, acquires funds by selling the specified securities to another party under a simultaneous agreement to repurchase the same securities at a specified price and date. A reverse repurchase (resale) agreement is one in which a party provides funds by purchasing specified securities pursuant to a simultaneous agreement to resell the same securities at a specified price and date.

in light of the scope of each depository institution's operations.

I. Legal Requirements

A. Government Securities Regulations

Securities sold under an agreement to repurchase that is collateralized by U.S. government and agency obligations are subject to regulations of the Treasury Department issued under the Government Securities Act of 1986, 15 U.S.C. 78o–5 (GSA). These regulations appear at 17 CFR Parts 400 to 450. Particular attention should be given to the requirements and "Required Disclosures" in 17 CFR 403.5. Institutions engaging in hold-in-custody repurchase transactions should also give attention to 17 CFR 450.

B. Other Laws and Regulations

Federal and state laws such as the antifraud provisions of the securities laws and the requirements of the Uniform Commercial Code may apply to a repurchase agreement.

Resale transactions of national banks and thrift institutions are subject to the lending limitations of 12 U.S.C. 84. In addition, state-chartered institutions should consult with their counsel or state regulatory authorities as to the applicability of state lending limitations. Depository institutions should also consider other rules that may apply to the transactions depending on the type of bank charter.

II. Credit Policy Guidelines for Securities Purchased Under Agreement to Resell

All depository institutions that engage in securities repurchase agreement transactions should establish written credit policies and procedures governing these activities. These policies and procedures usually address:

A. Counterparties

Policies normally include "know your counterparty" principles. Engaging in repurchase agreement transactions in volume and in large dollar amounts frequently requires the services of a counterparty who is also a dealer in the underlying securities. Some firms that deal in the markets for U.S. Government and federal agency securities are subsidiaries of, or related to, financially stronger and better-known firms. However, these stronger firms may be independent of their U.S. Government securities subsidiaries and affiliates and may not be legally obligated to stand behind the transactions of related companies. Without an express written guarantee, the stronger firm's financial position cannot be relied upon to assess the creditworthiness of a counterparty.

Depository institutions should know the legal entity that is the actual counterparty to each repurchase agreement transaction. This includes knowing about the actual counterparty's character, integrity of management, activities, and the financial markets in which it deals. Depository institutions should be particularly careful in conducting repurchase agreements with any firm that offers terms that are significantly more favorable than those currently prevailing in the market.

In certain situations, depository institutions may use, or serve as, brokers or finders to locate repurchase agreement counterparties or particular securities. When using or acting as this type of agent, the name of each counterparty should be fully disclosed. Depository institutions should not enter into undisclosed agency or "blind brokerage" repurchase transactions in which the counterparty's name is not disclosed.

B. Credit Analysis

Periodic evaluations of counterparty creditworthiness should be conducted by individuals who routinely make credit decisions and who are not involved in the execution of repurchase agreement transactions.

Before engaging in initial transactions with a new counterparty, depository institutions should obtain audited financial statements and regulatory filings from the proposed counterparty, and should require the counterparty to provide similar information on a periodic and timely basis in the future.

The credit analysis should consider the counterparty's financial statements and those of any related companies that could have an impact on the financial condition of the counterparty. When transacting business with a subsidiary, consolidated financial statements of a parent are not adequate. Repurchase agreements should not be entered into with any counterparty that is unwilling to provide complete and timely disclosure of its financial condition. The depository institution also should inquire about the counterparty's general reputation and whether state or federal securities regulators or self-regulatory organizations have taken any enforcement actions against the counterparty or its affiliates.

C. Credit Limits

Depository institutions usually establish maximum position and temporary exposure limits for each approved counterparty based upon credit analysis performed. Periodic reviews and updates of those limits are necessary.

When assigning individual repurchase agreement counterparty limits, the depository institution should consider overall exposure to the same or related counterparty throughout the organization. Repurchase agreement counterparty limitations should consider the overall permissible dollar positions in repurchase agreements, maximum repurchase agreement maturities, limitations on the maturities of collateral securities, and limits on temporary exposure that may result from decreases in collateral values or delays in receiving collateral.

III. Guidelines for Controlling Collateral for Securities Purchased Under Agreement to Resell

Repurchase agreements can be a useful asset and liability management tool, but repurchase agreements can expose a depository institution to serious risks if they are not managed appropriately. It is possible to reduce repurchase agreement risk if the depository institution executes written agreements with all repurchase agreement counterparties and custodian banks. Compliance with the terms of these written agreements should be monitored on a daily basis.

The marketplace perceives repurchase agreement transactions as similar to lending transactions collateralized by highly liquid securities. However, experience has shown that the collateral securities probably will not serve as protection if the counterparty becomes insolvent or fails, and the purchasing institution does not have control over the securities. This policy statement provides general guidance on the steps depository institutions should take to protect their interest in the securities underlying repurchase agreement transactions (see "C. Control of Securities"). However, ultimate responsibility for establishing adequate procedures rests with management of the institution. The depository institution's legal counsel should review repurchase agreements to determine the adequacy of the procedures used to establish and protect the depository institution's interest in the underlying collateral.

A. General Requirements

Before engaging in repurchase transactions, a depository institution should enter into a written agreement covering a specific repurchase agreement transaction or master agreement governing all repurchase agreement transactions with each counterparty. Valid written agreements

normally specify all the terms of the transaction and the duties of both the buyer and seller. The agreement should be signed by authorized representatives of the buyer and seller. Senior managers of depository institutions should consult legal counsel regarding the content of the repurchase and custodial agreements. Counsel should review the enforceability of the agreement with consideration as to the differing rules of liquidation for agreements with different counterparties, such as broker/dealers, banks, insurance companies, municipalities, pension plans, and foreign counterparties. Repurchase and custodial agreements normally specify, but are not limited to, the following:

Terms of transaction initiation, confirmation and termination;

Provisions for payments and transfers of securities;

Requirements for segregation of collateral securities;

Acceptable types and maturities of collateral securities;

Initial acceptable margin for collateral securities of various types and maturities;

Margin maintenance and collateral repricing provisions;

Provisions for collateral substitution;

Rights to interest and principal payments;

Events of default and the rights and obligations of the parties;

Required disclosures for transactions in which the seller retains custody of purchased securities;

Disclosures required by regulatory agencies; and

Persons authorized to transact business for the depository institution and its counterparty.

B. Confirmations

Some repurchase agreement confirmations may contain terms that attempt to change the depository institution's rights in the transaction. The depository institution should obtain and compare written confirmations for each repurchase agreement transaction to be certain that the information on the confirmation is consistent with the terms of the agreement. Confirmations normally identify the essential terms of the transaction, including the identity of specific collateral securities and their market values.

C. Control of Securities

As a general rule, a depository institution should obtain possession or control of the underlying securities and take necessary steps to protect its interest in the securities. The legal steps necessary to protect its interest may vary with applicable facts and law, and accordingly should be undertaken with the advice of counsel. Particular attention should also be given to the possession or control requirements under 17 CFR 450 for depository institutions when acting as a custodian for any type of repurchase agreement. Additional prudential management controls may include:

(1) Direct delivery of physical securities to the institution, or transfer of book-entry securities by appropriate entry in an account maintained in the name of the depository institution by a Federal Reserve bank which maintains a book-entry system for U.S. Treasury securities and certain agency obligations (for further information as to the procedures to be followed, contact the Federal Reserve bank for the district in which the depository institution is located);

(2) Delivery of either physical securities to, or in the case of book-entry securities, making appropriate entries in the books of a third-party custodian designated by the depository institution under a written custodial agreement which explicitly recognizes the depository institution's interest in the securities as superior to that of any other person; or

(3) Appropriate entries on the books of an independent third-party custodian exercising independent control over the exchange of securities and funds and acting pursuant to a tripartite agreement with the depository institution and the counterparty. The third-party custodian should ensure adequate segregation, free of any lien or claim, and specific identification and valuation of either physical or book-entry securities.

If control of the underlying securities is not established, the depository institution may be regarded only as an unsecured general creditor of an insolvent counterparty. Under these circumstances, substantial losses are possible. Accordingly, a depository institution should not enter into a repurchase agreement without obtaining control of the securities unless all of the following minimum procedures are observed:

It is completely satisfied as to the creditworthiness of the counterparty;

The transaction is within credit limitations that have been pre-approved by the board of directors, or a committee of the board, for unsecured transactions with the counterparty;

The depository institution has conducted periodic credit evaluations of the counterparty;

The depository institution has ascertained that collateral segregation procedures of the counterparty are adequate; and

It obtains a written and executed repurchase agreement and pays particular attention to the provisions of 17 CFR 403.5.

Unless prudential internal procedures of these types are instituted and observed, the financial supervisory agency may cite the depository institution for engaging in unsafe or unsound practices.

All receipts and deliveries of either physical or book-entry securities should be made according to written procedures, and third-party deliveries should be confirmed in writing directly by the custodian. The depository institution normally obtains a copy of the advice of the counterparty to the custodian requesting transfer of the securities to the depository institution. Where securities are to be delivered, the depository institution should not make payment for securities until the securities are actually delivered to the depository institution or its agent. In addition, custodial contracts normally provide that the custodian take delivery of the securities subject to the exclusive direction of the depository institution.

Substitution of securities should not be allowed without the prior written consent of a depository institution. The depository institution should give its consent before the delivery of the substitute securities to the depository institution or a third-party custodian and receive a written list of specific securities substituted and their respective market values. Any substitution of securities should take into consideration the following discussion of "Margin Requirements."

D. Margin Requirements

Under the repurchase agreement a depository institution should pay less than the market value of the securities, including the amount of any accrued interest, with the difference representing a predetermined margin. When establishing an appropriate margin, a depository institution should consider the size and maturity of the repurchase transaction, the type and maturity of the underlying securities, and the creditworthiness of the counterparty. Margin requirements on U.S. government and federal agency obligations underlying repurchase agreements should allow for the anticipated price volatility of the security until the maturity of the repurchase agreement. Less marketable securities may require additional margin to compensate for less liquid market conditions. Written repurchase agreement policies and procedures normally require daily mark-to-market of repurchase agreement securities to

the bid side of the market using a generally recognized source for securities prices. Repurchase agreements normally provide for additional securities or cash to be placed with the depository institution or its custodian bank to maintain the margin within the predetermined level.

Margin calculations should also consider accrued interest on underlying securities and the anticipated amount of accrued interest over the term of the repurchase agreement, the date of interest payment, and which party is entitled to receive the payment. In the case of pass-through securities, anticipated principal reductions should also be considered when determining margin adequacy.

E. Maturity and Renewal Procedures

Depository institutions should follow prudent management procedures when administering any repurchase agreement. For longer term repurchase agreements, management should monitor daily the effects of securities substitutions, margin maintenance requirements (including consideration of any coupon interest or principal payments) and possible changes in the financial condition of the counterparty. Engaging in open repurchase agreement transactions without maturity dates may be regarded as an unsafe and unsound practice unless the depository institution has, in its written agreement, retained rights to terminate the transaction quickly to protect itself against changed circumstances. Similarly, automatic renewal of short-term repurchase agreement transactions without reviewing collateral values, adjusting collateral margin, and receiving written confirmation of the new contract terms, may be regarded as an unsafe and unsound practice. If additional margin is not deposited when required, the depository institution's rights to sell securities or otherwise liquidate the repurchase agreement should be exercised without hesitation.

IV. Guidelines for Controlling Collateral for Securities Sold Under Agreement to Repurchase

Depository institutions normally use current market values (bid side), including the amount of any accrued interest, to determine the price of securities that are sold under repurchase agreements. Counterparties should not be provided with excessive margin. Thus, the written repurchase agreement contract normally provides that the counterparty must make additional payment or return securities if the margin exceeds agreed upon levels. When acquiring funds under repurchase agreements it is prudent business practice to keep at a reasonable margin the difference between the market value of the securities delivered to the counterparty and the amount borrowed. The excess market value of securities sold by a depository institution may be viewed as an unsecured loan to the counterparty subject to the unsecured prudential limitations for the depository institution and should be treated accordingly for credit policy and control purposes.

Dated: February 5, 1998.

Joe M. Cleaver,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 98-3373 Filed 2-10-98; 8:45 am]

BILLING CODES 6210-01-P; 6720-01-P; 6714-01-P; 4810-01-P