

CONFLICTS OF INTEREST

IS YOUR
PROGRAM
EFFECTIVE?

Fiduciary & Investment Risk Management Association
29th National Risk Management Training Conference
Nashville, Tennessee
Wednesday, April 22, 2015

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

- “Conflicts of interest arise whenever a bank engages in self-dealing and in any situation where a bank’s ability to act in the best interest of its account beneficiaries or clients is impaired”
- “Self-dealing is when the bank, as fiduciary, engages in a transaction with itself or related parties and interests”

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

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CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

- Identify types of conflicts
- Infrastructure Review
- Risk Assessment
- Monitoring and Surveillance Activities
- Training and Communications

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Types of Conflicts

- Bank, affiliate, employee, officer or director or any individual having an interest that ***might*** effect the bank's exercise of its best judgment engages in a transaction with a fiduciary account.
- Bank exercising investment discretion places fiduciary funds in an obligation of the bank or affiliate of the bank.
- Bank exercising investment discretion places fiduciary assets in a proprietary investment products.
- Bank exercising investment discretion allocates fiduciary brokerage business to an affiliated b-d.
- Bank exercising investment discretion delegates investment discretion to organizations from which the bank receives direct or indirect financial benefit.
- Bank exercising investment discretion invests fiduciary assets in investment products sponsored by, or allocates fiduciary brokerage to, organizations from which the bank receives direct or indirect financial benefit
- Not dealing fairly with customers or collects fees that are either not disclosed or not authorized by applicable are unreasonable.
- Employee compensation plan contains provisions that may give employees an incentive to act other than in the best interest of fiduciary clients.
- Engaging in unethical behavior.
- Bank is a creditor or an issuer of a security for which the bank is indenture trustee.

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Infrastructure Review

GAP Analysis

Polices/procedures and controls should correlate to the complexity of your organization

Code of Ethics

Personal Securities Transactions - not just for the PMs

Reporting and escalation

Training

Self-identify

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Risk Assessment

| Potential COI | Control Environment* | Assessment |
|--|---|----------------|
| Use of Affiliated Funds | Disclosures, Fee Discounts/Reasonable Fees, Robust Due Diligence Process | High, Med, Low |
| Use of Affiliated Service Providers | Disclosures, Reasonable Fees, Vendor Oversight | |
| Sale of Fiduciary Assets to Related Parties | Administrative Account Reviews, Exception Asset Reviews, Committee Oversight | |
| Purchases from Affiliated Underwriting Syndicates | Database to track underwritten issues and technology to prevent such a purchase | |
| Loans to Officers, Directors, Employees from a Fiduciary Account | Administrative Account Review | |
| Compensation to the business for affiliated products and services, receipt of 12b-1 fees | Disclosures, Fee Discounts and Reasonable Fees, Rebate of 12B-1 | |
| Bank employee, officer, director outside activities or affiliations or serving as co-fiduciaries | Disclosure and approval, annual affiliation survey | |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Risk Assessment

| Potential COI | Control Environment* | Assessment |
|--|--|----------------|
| Gifts and Entertainment | Gift log, Gift Policy, non-cash compensation | High, Med, Low |
| Charitable Giving | Committee oversight and approval | |
| Trading Conflicts •Best Execution •Broker Selection •Directed Brokerage •Soft Dollar Arrangements •Allocation of Securities •Front Running •Trade Errors •Market Timing •Allocation of IPOs •Transactions between client accts •Personal Securities Transactions •Purchase of investments manufactured by an affiliate | Oversight by committee Policies, policies, policies Prohibitions/forbidden by the Bank Surveillance by the 1 st and 2 nd line | |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Risk Assessment

| Potential COI | Control Environment | Assessment |
|---|--|----------------|
| Unique Situations • Financial Planning • Research recommendations • Underwritings • Insurance/Annuity Sales • Relationships with other areas of the bank | Disclosures PST and restricted list Surveillance of annuity sales Education Chinese Wall and Compliance Monitoring | High, Med, Low |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Risk Assessment

| Potential COI | Control Environment* | Assessment |
|---|----------------------|----------------|
| Compensation from fiduciary clients requires "reasonable fees" | | High, Med, Low |
| Loans from Bank to fiduciary account | | |
| Referral and solicitation arrangements | | |
| Mutual fund distribution arrangements and fees | | |
| Compensation to employees for sales of products and services | | |
| Valuations of unique assets and fees, trust assets as collateral for Bank loans | | |
| | | |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Risk Assessment Grid

| Process | Requirement | Risk Description | Inherent Risk | Mitigating Control | Residual Risk | Direction of Risk | Test Program Step |
|--------------------------------------|---|---|---------------|---|---------------|-------------------|-------------------|
| Services provided by bank affiliates | What controls in place to be sure appraisers, tax preparers, property managers, etc. are not affiliated with Bank and, if so, proper disclosure and consent obtained? | What controls in place to be sure appraisers, tax preparers, property managers, etc. are not affiliated with Bank and, if so, proper disclosure and consent obtained? | High | Verification by Unique Asset Group that vendor used to perform services is not an affiliate by checking the most current Reg W/23A Affiliates List and Affiliation Survey | Moderate | Stable | |
| | | | | | | | |
| | | | | | | | |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Monitoring and Surveillance

| Purpose | Frequency | Data scanned on trust accounting system |
|--|-----------|--|
| Overdrafts in employee/director accounts | Daily | Overdrafts in employee/director accounts |
| Affiliate holdings monitoring | Monthly | Holdings of affiliates in managed accounts. |
| Affiliate trade monitoring | Monthly | Trades settled at a broker/dealer that qualifies as an affiliate or at an entity in which the bank's best judgment may be impaired under Reg 9 |
| Loan activity in managed accounts | Monthly | Loan activity between managed accounts |
| Reg Y compliance | Monthly | Holdings of assets qualified under Reg Y (e.g., banks, bank holding companies) in trust accounts |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Monitoring and Surveillance

| Purpose | Frequency | Data scanned on trust accounting system |
|---|-----------|--|
| Revenue sharing fees | Monthly | Revenue sharing codings in managed accounts |
| Trust deposit sweep vehicle usage | Monthly | Usage of sweep vehicles |
| Affiliate repurchase agreements, CDs, and/or commercial paper | Monthly | Holdings of repo's or CDs or commercial paper issued by/ offered by affiliate or an entity in which the bank's best judgment may be impaired under Reg 9 |
| Affiliate sweep vehicles | Monthly | Usage of sweep vehicles offered by affiliate or an entity in which the bank's best judgment may be impaired under Reg 9 |
| Trades between managed accounts | Monthly | Potential cross-trades between managed accounts |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Monitoring and Surveillance

| Purpose | Frequency | Data scanned on trust accounting system |
|---|-----------|---|
| Pledged common trust funds | Monthly | Holdings of pledged common trust funds in managed accounts |
| Assets issued by bank in managed accounts | Monthly | Holdings of the bank- or bank-issued assets in managed accounts |
| Employee affiliations monitoring | Quarterly | Accounts held for, and disbursements to, entities identified in annual trust department employee affiliation survey |
| Employee or director account activity | Quarterly | Transactions, fees, and loan activity in employee/director accounts |
| Bank loan activity in managed accounts | Quarterly | Bank loan activity in managed accounts |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Monitoring and Surveillance

| Purpose | Frequency | Data scanned on trust accounting system |
|-----------------------|-----------|--|
| Large or Unusual Fees | Quarterly | Potentially large or unusual fees in managed accounts |
| Statement recipients | Quarterly | Managed accounts with no external statement recipients |

CONFLICTS OF INTEREST IS YOUR PROGRAM EFFECTIVE?

Training and Communication

Annual Conflict of Interest Training (on-line)

Conflicts of Interest & Self-Dealing

Fiduciary Services

Conflicts of Interest & Self-Dealing

Introduction:

During this training course, you will review the concepts of conflicts of interest and self-dealing and will acquire the ability to identify situations that may cause a conflict of interest and to address it in the appropriate manner.

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Conflicts of Interest & Self-Dealing

What is a Fiduciary?

As a fiduciary, the Bank, N.A. is mandated by law and regulations to provide its clients with undivided loyalty.

Therefore, the bank must perform its duties for the exclusive benefit of its clients and beneficiaries, always seeking to avoid any situation in which conflicts of interest may occur.

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Conflicts of Interest & Self-Dealing

What is a Fiduciary? cont.

A fiduciary is a person or corporate entity, who undertakes the duty to act primarily for another's benefit in a relationship of candor, good faith and confidence as to matters within the scope of the relationship.

Examples of fiduciaries:

- Executors for estates
- Trustees

The Office of Comptroller of Currency considers as fiduciary in nature, investment management and advisory relationships whether the bank has full investment discretion or provides investment advice for a fee. ERISA's definition of fiduciary also includes, among others, persons who have investment discretion or provide investment advice for a fee to an employee benefit or the plan's participants. Federal regulatory authorities and state courts have long recognized that corporate fiduciaries will be held to the highest standards in implementing the fiduciary duties owed to their beneficiaries.

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Conflicts of Interest & Self-Dealing

What is a Fiduciary? cont.

The rules with respect to self-dealing and conflicts of interest are contained in ERISA (for accounts subject thereto) and in OCC regulations codified in 12 CFR Part 9 (Reg. 9), section 9.12. If any violation of law, regulation or the governing instrument pertaining to conflicts of interest and self-dealing has occurred in a transaction, it is the policy of the Bank to correct said violation at no loss to the account.

Under OCC Reg. 9.2, the Bank acts in a fiduciary capacity when the Bank acts as trustee, executor, guardian, custodian under the Uniform Transfers to Minors Act, or investment adviser.

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Conflicts of Interest & Self-Dealing

ERISA

ERISA is the Employee Retirement Income Security Act of 1974, as amended, is a federal law that sets minimum standards for most voluntarily established pension and health plans in the private sector.

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Conflicts of Interest & Self-Dealing

What is the Fiduciary Duty of Loyalty?

A fiduciary has the foremost duty of undivided loyalty.

the Bank should not be motivated by financial or business gain from the administration of the relationship, except in accordance with the account level (or other appropriate) fee arrangements, and should avoid situations or transaction in which the Bank's interests and interests of the account conflict or may give the appearance of a conflict of interest.

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Conflicts of Interest & Self-Dealing

What is the Fiduciary Duty of Loyalty? cont.

When the Bank's actions are contrary to provisions of the governing instrument, state law (or applicable rules and regulations) or the interests of the beneficiaries, the Bank may be exposed to potential liability from beneficiary litigation, regulatory sanctions and reputational risk.

This litigation may be brought by current beneficiaries and future beneficiaries who challenge decisions made years prior to when these beneficiaries acquired their interests in the trust.

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Conflicts of Interest & Self-Dealing

What is the Fiduciary Duty of Loyalty? cont.

In the case of an employee benefit account, a fiduciary must take whatever steps are necessary to assure itself that the practice is consistent with the requirements of ERISA and applicable prohibited transaction exemptions.

IRA's are not subject to ERISA, but are subject to the Internal Revenue Code's prohibited transaction provisions, which mirror those in ERISA.

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Conflicts of Interest & Self-Dealing

How does the Bank try to prevent conflicts or self-dealing transactions?

The Bank has established policies to prevent and handle conflicts of interest and self-dealing transactions. These policies can be found on the Bank's intraweb site, under Work tools, *eLibrary* and the *Trust Policy Manual* section.

The following policies address these issues and are discussed in this training:

- Acceptance of Financial Benefits
- Investment of fiduciary assets in the Bank deposits
- Purchase and retention of securities issued by the Bank, its parent and/or affiliates
- Anti-Linkage
- Purchase of securities or assets for a fiduciary account from syndicates in which the bank or affiliate participated
- Purchase or sale of securities or assets for a fiduciary account through the bank or affiliated broker/dealer
- Master Insider List

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Conflicts of Interest & Self-Dealing

What is a conflict of Interest?

Conflicts of interest are defined by the OCC as transactions with individuals or organizations "with whom there exists an interest that might affect the exercise of the best judgment of the bank." Individuals or organizations falling within this category include directors, officers, employees and affiliates of the Bank.

In addition, state laws prohibit a bank from taking advantage of its position to benefit itself or a third party.

The duty of loyalty requires a bank to administer the account in the interests of the beneficiaries alone, excluding from consideration its own advantage of its affiliates. For non-ERISA accounts, informed consent from beneficiaries may help in managing risk associated with actual or perceived conflicts.

Employees should not engage in activities, which would compete with the bank or be in conflict with the Bank's fiduciary duty to its accounts.

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Conflicts of Interest & Self-Dealing

A conflict of interest may exist?

| | |
|----------------------|---|
| Answer Choices: | A. Whenever the Bank uses poor judgment in making discretionary decisions. B. Whenever the Bank appears to be serving its own interest over its client's interest C. Both A. and B. |
| Correct Answer: | B. |
| "Correct" Response | You are correct! A conflict of interest may exist whenever the Bank appears to be serving its own interest over its clients interest |
| "Incorrect" Response | You are incorrect. A conflict of interest may exist whenever the Bank appears to be serving its own interest over its clients interest |

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Conflicts of Interest & Self-Dealing

What is the Policy on Acceptance of Financial Benefits?

The acceptance by the Bank of any financial benefits directly or indirectly conditioned on the investment of trust assets in a particular investment is prohibited under 12 CFR 9.12 (a), and is also prohibited by fiduciary laws of most states and ERISA.

Therefore, the acceptance of financial incentives from, for example, investment management firms that sponsor mutual funds or other investment funds in exchange for the investment of fiduciary assets in specific offered by those firms could be considered a conflict of interest.

These financial incentives may take the form of:

- Discounts or rebates on fees paid for products or services
- Computer products or services
- Seminars and travel expenses for Bank personnel in connection with programs offered or sponsored by investment fund sponsors

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Conflicts of Interest & Self-Dealing

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Conflicts of Interest & Self-Dealing

What is the Policy on Acceptance of Financial Benefits?

The OCC has indicated "By accepting benefits such as travel expenses offered in connection with seminars, including the personal benefits of recreation and other social activities, from investment company managers, trustees place themselves in positions where their investment decisions may be influenced by factors that are not relevant to the suitability of their investment for their trust clients"

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Conflicts of Interest & Self-Dealing

A mutual fund company, in which the Bank invests fiduciary funds, offers to provide you a trip to attend a seminar regarding training on the fund materials. Travel and lodging will be paid for by the fund company. You?

| | |
|----------------------|--|
| Answer Choices: | A. Accept because it is related to Bank business B. Accept because it is at no cost to the Bank C. Decline the invitation because it goes against Bank policy. D. Accept the invitation, but do not accept payment from the mutual fund company for the travel and lodging expenses |
| Correct Answer: | D. |
| "Correct" Response | You are correct! You accept the invitation to the seminar, but do not accept payment from the mutual fund company for the travel and lodging. |
| "Incorrect" Response | You are incorrect. You accept the invitation to the seminar, but do not accept payment from the mutual fund company for the travel and lodging. |

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Conflicts of Interest & Self-Dealing

What is the policy on investment of fiduciary assets in the Bank Time Deposits?

Although trust funds may be temporarily deposited in time deposits of the Bank while awaiting investment or distribution, the permanent investment of trust funds in such time deposits would violate the Bank's policy unless authorized by the governing instrument, court order, state law or ERISA as applicable.

Generally, investments in time deposits for more than one year are deemed by the OCC to be investments and not temporary.

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Conflicts of Interest & Self-Dealing

What is the policy on the purchase and retention of securities issued by the Bank and its affiliates?

Securities issued by the Bank or its affiliates should not be purchased for a fiduciary account unless the governing instrument, court order or state law authorizes the investment.

The Bank will not purchase from other entities securities issued by the Bank or its affiliates for any discretionary fiduciary account unless the governing instrument contains SPECIFIC authority to invest in such securities or court order or state law has authorized the investment, AND the investment is otherwise appropriate.

Conflicts of Interest & Self-Dealing

What does discretion mean?

Investment discretion means, with respect to an account, the sole or shared authority (whether or not that authority is exercised) to determine what securities or other assets to purchase or sell on behalf of the account. A bank that delegates its authority over investments and a bank that receives delegated authority over investments are both deemed to have investment discretion.

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Conflicts of Interest & Self-Dealing

What is the policy on the purchase and retention of Securities issued by the Bank and its affiliates?

In fiduciary accounts where the Bank has no investment responsibility, the prohibition of 12 CFR 9.12 against the investment in the Bank securities does not apply.

Where a trust instrument in general terms authorizes the trustee to retain investments (even if the instrument does not refer to securities of the corporate trustee), the settlor has probably waived the conflict of interest as to bank stock received as an original asset of the account (but not for any additional stock)

In general, a statute that waives the conflict of interest for the retention of the settlor's property probably is sufficient authority for the retention of securities issued by the trustee or its affiliates if the investment is otherwise appropriate.

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Conflicts of Interest & Self-Dealing

What is the policy on the purchase and retention of Securities issued by the Bank and its affiliates?

In ERISA accounts, a purchase of securities issued by affiliates of the Bank may constitute a prohibited transaction and a violation of ERISA section 406. When such securities are purchased for employee benefit plans, the following safeguards should be followed:

- a) Any such purchase shall be directed by a properly authorized plan fiduciary, which is independent of the Bank;
- b) In the Bank's capacity as directed trustee or custodian, the independent fiduciary would issue investment directions to the Bank and the Bank would execute based on that direction. The independent fiduciary can also direct the Bank to use a particular broker.

While an independent plan fiduciary may determine that the securities issued by an affiliate of the Bank are an appropriate investment for the plan, the listed safeguards are intended to protect the interests of the plan participants, by preventing any inference that the Bank has engaged in a prohibited transaction with regards to the purchase.

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Conflicts of Interest & Self-Dealing

the Bank is prohibited by law and regulation from purchasing securities issued by the Bank or its affiliates in discretionary non-ERISA accounts?

| | |
|----------------------|---|
| Answer Choices: | A. Under any circumstances B. Unless at least one beneficiary authorizes C. Unless the investment is authorized by the governing instrument, court order, or state law D. None of the above |
| Correct Answer: | C. |
| "Correct" Response | You are correct! The Bank is prohibited by law and regulation from purchasing securities issued by the Bank or its affiliates in discretionary non-ERISA accounts unless the investment is authorized by the governing instrument, court order, or state law. |
| "Incorrect" Response | You are incorrect. The Bank is prohibited by law and regulation from purchasing securities issued by the Bank or its affiliates in discretionary non-ERISA accounts unless the investment is authorized by the governing instrument, court order, or state law. |
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Conflicts of Interest & Self-Dealing

What is a Self-Dealing Transaction?

Self-dealing transactions include direct or indirect sales to, or purchases of fiduciary account assets from the Bank or the Bank's affiliates, directors, officers or employees.

Most state laws and ERISA expressly prohibit self-dealing transactions, with a few exceptions, such as permitting the purchase of affiliated mutual funds

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Conflicts of Interest & Self-Dealing

What is a Self-Dealing Transaction?

In a self-dealing transaction, courts are reluctant to try to weigh the benefits to the beneficiaries against the benefits to the fiduciary or its affiliates. The self-dealing rules are nearly absolute and designed to prevent, not remedy, self-dealing transactions.

If the transaction in question pertains to a potential self-dealing issue, the Bank should proceed only if one of the following exceptions exist:

- a) An exception is permitted under applicable state law or ERISA (e.g. the purchase of affiliated mutual funds) provided the conditions of the exception are satisfied; or
- b) For non-ERISA accounts,
 - I. The transaction is clearly permitted under the governing; or
 - II. Court approval is obtained; or
 - III. Binding beneficiary consent is obtained after full disclosure of the material terms of the transaction. All beneficiaries, both vested and contingent, must be represented.

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Conflicts of Interest & Self-Dealing

What is the Anti-Linkage Policy?

The Anti-Linkage Policy is designed to address a specific type of self-dealing transaction and to avoid the appearance of a breach of the duty of loyalty.

The Bank and its affiliates may have relationships or offer services to the same third parties, which provide services for the Bank's fiduciary accounts. If these other connections with third parties affect the Bank's fiduciary decisions, beneficiaries and regulators could assert that the bank had breached its fiduciary duty of loyalty. The Bank's policy is that these other connections should not affect how the Bank exercises its fiduciary judgment for its fiduciary accounts.

As part of the Bank's duty of loyalty, special rules exist that restrict "linking" transactions: with a) a third party ("XYZ Co.") involving the use of the Bank.

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Conflicts of Interest & Self-Dealing

Exceptions to the Anti-Linkage Policy.

- 1) Mere knowledge by the Bank of any the Bank connection with a third party does not disqualify that third party from providing investment advice or other goods or services to the Bank for its fiduciary accounts, if the Bank is able to show that the connection with the third party did not affect the Bank's judgment.
- 2) If the Bank is using its corporate assets, not the assets of the fiduciary account, to purchase goods or services for fiduciary accounts, this Anti-Linkage Policy does not apply. However, if the Bank is purchasing the investment advice or other services to discharge its discretionary fiduciary duties, this Policy does apply, even if the Bank uses corporate funds and no fiduciary assets.
- 3) HighMark mutual funds are exempt from this policy because there are laws and regulations which provide an exemption to the general self-dealing rules for mutual that pay a fee to an affiliate of the Bank. The Bank complies with the disclosure and other requirements of these laws, which allows the investment of fiduciary assets in such mutual funds.

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Conflicts of Interest & Self-Dealing

What is the Anti-Linkage Policy?

If you are requested by another the Bank employee to link the Bank's decision with another potential the Bank transaction, you should reply that the Bank makes fiduciary decisions in the best interests of its fiduciary accounts and independent of transactions involving other parts of the Bank. You should immediately contact the Personal Fiduciary Risk Management or the Legal Department to determine whether the proposed transaction would violate the Anti-Linkage Policy.

A Bank employee who participates in a violation of the Anti-Linkage Policy may be subject to disciplinary action, including termination of employment.

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Conflicts of Interest & Self-Dealing

What is the Policy on the Purchase of Securities for a Fiduciary Account from Syndicates in which the bank or an affiliate participated?

The duty of undivided loyalty also prohibits the Bank from purchasing securities underwritten by the Bank or an affiliate, either individually of the governing document, state law or court order, or Department of Labor exemption.

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Conflicts of Interest & Self-Dealing

What is the policy on the purchase or sale of securities or assets for a fiduciary account through the bank or affiliated broker/dealer?

OCC Reg 9 generally prohibits the purchase or sale of assets held in non-ERISA fiduciary accounts through an affiliated broker/dealer or the Bank, unless specifically authorized in the governing document, state law or by court order.

For example, the Bank, as fiduciary, could not purchase or sell assets over which it exercises investment discretion to or from any department/division of the bank without authorization in the governing document, state law or court order. Similarly, it could not purchase or sell assets over which it exercises investment discretion through a broker/dealer affiliate without meeting the qualifying exceptions.

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Conflicts of Interest & Self-Dealing

What is the policy on the purchase or sale of securities or assets for a fiduciary account through the bank or affiliated broker/dealer?

Qualifying exceptions include:

1. The affiliated broker forgoes any profit and
2. The arrangement is not prohibited by state law

Even if the document specifically authorizes the transaction, the Bank could be viewed as having violated its fiduciary responsibilities if the compensation paid to the brokerage affiliate was more than the Bank would have paid for an execution of a trade of like nature/quality from an unaffiliated broker/dealer.

With respect to ERISA accounts, it is the Bank's policy NOT to use an affiliated broker/dealer because of ERISA restrictions, unless the conditions of the Department of Labor Prohibited Transaction Class Exemption 86-128 are satisfied.

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Conflicts of Interest & Self-Dealing

What is the Policy regarding the Insiders List

It is the policy of the Bank to establish procedures to guard against inadvertent self-dealing transactions involving directors, advisory directors and executive officers.

Applicable forms are to be completed by these individuals at least on an annual basis and that information.

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Conflicts of Interest & Self-Dealing

Whom should you contact?

If you have any questions or concerns regarding transactions that may involve conflicts of interest or self-dealing, please contact the Legal Department or the Risk/Compliance Departments/

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Conflicts of Interest & Self-Dealing

What is the Policy regarding the Insiders List cont.

The perceived conflict is that a director may use his/her position to influence the securities purchased in fiduciary accounts. Transactions with the identified individuals/entity would violate 12 CFR 9.12 Self-Dealing and Conflicts of Interest unless the governing document, state law or court order specifically authorized the transaction. In ERISA accounts, if such influence was in fact exerted, such transactions may be considered prohibited transactions.

If the security is publicly traded, meets UB's investment standards, and no improper influence was in fact exerted, the conflict of interest would be mitigated. However, it would be difficult to mitigate the conflict in transactions that are made in thinly traded and closely-held securities.

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Conflicts of Interest & Self-Dealing

A Conflict of Interest may exist if any transaction pertaining to conflicts of interest and/or self-dealing, results in a violation of law, regulations, or governing instrument, the transaction should be corrected at no loss to the account.

| | |
|----------------------|---|
| Answer Choices: | A. TRUE B. FALSE |
| Correct Answer: | A. |
| "Correct" Response | You are correct! The transaction should be corrected at no loss to the account. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

What is the possible outcome if the Bank's actions are contrary to provisions of the governing instrument, state law or the interests of the beneficiaries?

| | |
|----------------------|---|
| Answer Choices: | A. Regulatory sanctions B. Possible litigation brought by current or future beneficiaries C. Reputation Risk D. All of the above |
| Correct Answer: | D. |
| "Correct" Response | You are correct! Possible litigation brought by current or future beneficiaries, regulatory sanctions and reputational risk are all possible outcomes if the actions of the Bank are contrary to provisions of the governing instrument, state law or the interests of the beneficiaries. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

Conflicts of Interest are defined as transactions with individuals or organizations with whom there exists an interest that might affect the Bank's exercise of its best judgment. Individuals or organizations falling within this category may include:

| | |
|----------------------|---|
| Answer Choices: | A. Affiliates of the Bank such as HighMark, UBIS B. Directors, advisory directors, executive officers and employees C. Customers of the bank D. All of the above |
| Correct Answer: | D. |
| "Correct" Response | You are correct! Individuals or organizations falling into this category include directors, executive officers, employees and customers of the bank. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

The Bank is prohibited by law and regulation from purchasing securities issued by the the Bank or its affiliates in discretionary non-ERISA accounts.

| | |
|----------------------|---|
| Answer Choices: | A. Under any situation and circumstance B. Only if it is in the best interest of the Bank to do so C. Unless the investment is authorized by the governing instrument, court order or state law D. None of the above |
| Correct Answer: | C. |
| "Correct" Response | You are correct! The Bank is prohibited from purchasing UB issued securities, unless the investment is authorized by the governing instrument, court order, or state law. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

Under the Anti-Linkage Policy, an inappropriate linkage occurs with respect to XYZ Co. when:

| | |
|----------------------|--|
| Answer Choices: | A. the Bank uses fiduciary account assets to purchase goods or services from XYZ Co. in order to induce XYZ Co. to buy or sell products from other parts of the Bank. B. A the Bank employee outside of Personal Trust, or HighMark or UBIS employee seek to have Personal Trust use XYZ Co for investment advice for fiduciary accounts so that XYZ Co will purchase services from other areas of the Bank, HighMark or UBIS. C. XYZ Co has an account with the Bank, Highmark and UBIS. D. All of the above E. A and B F. A and C |
| Correct Answer: | E. |
| "Correct" Response | You are correct! Both A and B are examples of the Anti-Linkage. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

With respect to non-ERISA accounts, under no circumstances is the Bank permitted to purchase securities underwritten by an affiliate of the Bank during the underwriting period

| | |
|----------------------|---|
| Answer Choices: | A. TRUE B. FALSE |
| Correct Answer: | B. |
| "Correct" Response | You are correct! With respect to non-ERISA accounts, the Bank is permitted to purchase securities underwritten by an affiliated underwriter during the underwriting period provided that the security is not purchased directly from a the Bank affiliate; and the purchase meets the requirements adopted by a resolution of the Board of Directors permitting such purchases. |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

With respect to the use of an affiliated broker, even if the governing document specifically allows for such transactions, the Bank could be viewed as having violated its fiduciary responsibilities if the compensation paid to the affiliated broker was more than the Bank would have paid for an execution of a trade of like nature/quality from an unaffiliated broker/dealer

| | |
|----------------------|---|
| Answer Choices: | A. TRUE B. FALSE |
| Correct Answer: | A. |
| "Correct" Response | You are correct! Even if the document specifically authorizes the transaction, the Bank could be viewed as having violated its fiduciary responsibilities since it could be perceived as a self-dealing |
| "Incorrect" Response | You are incorrect. Please try again |

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Conflicts of Interest & Self-Dealing

If you believe that a situation may involve a Conflict of Interest, you should only notify your supervisor/manager.

| | |
|----------------------|--|
| Answer Choices: | A. TRUE B. FALSE |
| Correct Answer: | B. |
| "Correct" Response | You are correct! You should contact the Legal Department or the Risk/Compliance Department, even if you have already notified your supervisor/manager. |
| "Incorrect" Response | You are incorrect. Please try again |

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**CONFLICTS OF INTEREST
IS YOUR PROGRAM EFFECTIVE?**

THANK YOU!!