

(“Act”), 12 U.S.C. 1464, as amended, and its charter and bylaws, whether or not implemented specifically by Office regulations, subject to the limitations and interpretations contained in this part.

§ 545.2 Federal preemption.

The regulations in this part 545 are promulgated pursuant to the plenary and exclusive authority of the Office to regulate all aspects of the operations of Federal savings associations, as set forth in section 5(a) of the Act. This exercise of the Office’s authority is preemptive of any state law purporting to address the subject of the operations of a Federal savings association.

§ 545.16 Public deposits, depositaries, and fiscal agents.

(a) *Definitions.* As used in this section—

(1) *Moneys* includes *monies* and has the meaning it has in applicable state law;

(2) *State law* includes actions by a governmental body which has a charter adopted under the constitution of the state with provisions respecting deposits of public money of that body;

(3) *Surety* means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have under applicable state law.

(b) *Authority to act as surety for public deposits.* (1) A Federal savings association that is a deposit association may give bond or security for deposit in it of public moneys or investment in it by a governmental unit if required to do so by state law, either as an alternative condition or otherwise, regardless of the amount required. Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(2) If state law requires as a condition of such deposit or investment that the Federal savings association or its bond or security, or any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the Federal savings association or in any other institution(s) having, when the investments or deposits were made, insur-

ance by the Federal Deposit Insurance Corporation, the same shall become, or if the state law is self-executing shall be, such surety.

(c) *Depositaries and fiscal agents.* Subject to regulation of the United States Treasury Department, a Federal savings association may serve as a depository for Federal taxes, as a Treasury tax and loan depository, or as a depository of public money and fiscal agent of the Government or any other instrumentality thereof when designated for that purpose by such instrumentality and approved by the Office, and may satisfy any requirement in connection therewith, including maintaining accounts described in §§ 561.33, 561.52, 561.53, and 561.54 of this chapter; pledging collateral; and performing the services outlined in 31 CFR 202.3(b) or any section that supersedes or amends § 202.3(b).

§ 545.17 Funds transfer services.

A Federal savings association is authorized to transfer, with or without fee, its customers’ funds from any account (including a line of credit) of the customer at the Federal savings association or at another financial intermediary to third parties or other accounts of the customer on the customer’s order or authorization by any mechanism or device, including cashier’s checks, conforming with applicable laws and established commercial practices.

§ 545.74 Securities brokerage.

(a) A service corporation may execute securities transactions on an agency or riskless principal basis solely upon the order of and for the account of customers, and may provide standardized and individualized investment advice to individuals or entities, provided that the service corporation:

(1) Conducts securities brokerage and investment advisory activities in an area that is clearly identified and distinguished from the areas where the association’s depository functions are performed;

(2) Distinguishes advertising by the service corporation from that of the association, such that advertising does

not confuse securities transactions executed, securities purchased, or investment advice provided by the service corporation with federally-insured deposits; that the advertising indicates that the service corporation and broker-dealer, and not the association, is providing the securities brokerage or investment advisory services, identifies the broker-dealer in advertising, and does not use the logo of the parent association in the text of any advertisement prepared or distributed by the service corporation or the broker-dealer or in the text of any advertisement for specific securities products;

(3) Where the service corporation contracts with a third-party broker-dealer, has a written contract with the broker-dealer that provides that the broker-dealer agrees to indemnify fully the service corporation and the association for any liability arising from the negligence, recklessness, or intentional conduct of the broker-dealer or its employees, and that sets forth operating, marketing, compensation, and other relevant terms;

(4) Provides to the OTS an initial opinion of counsel or an opinion from the senior securities principal responsible for overseeing the subject brokerage program that the program has been established pursuant to operational procedures that are intended to ensure that the program is conducted in conformity with applicable securities laws and regulations and that such procedures include internal controls and supervisory systems that have been established and are to be applied to detect and prevent violations of federal securities statutes, the rules adopted thereunder, and the rules of self-regulatory organizations applicable to broker-dealers, including but not limited to those provisions designed to prevent churning, unsuitable recommendations, charging excessive prices, and the making of fraudulent representations in connection with the offer, sale, or purchase of securities (“the regulations”); and on an annual basis thereunder provides a certification by the senior securities principal responsible for supervising and overseeing the subject brokerage program that he or she has discharged the obligations incumbent upon him or her

by reason of such procedures and systems previously described and has no reasonable belief or cause to believe that such procedures and systems have not been and are not being complied with or that a violation of the regulations has occurred;

(5) Does not condition the provision of securities services to a customer on the customer’s utilizing services of any affiliate of the association, the service corporation, or a broker-dealer.

(b) Service corporation activities authorized under this paragraph (b) may not include the following activities:

(1) Execution of securities transactions on a principal basis, including market-making and underwriting, except on a riskless principal basis, and except as permitted under §559.4 of this chapter;

(2) Payment to any employee of the association of a referral fee, bonus, or any incentive compensation, in cash or in kind, for referring any customer to the service corporation except as may be consistent with a “no-action” letter received by the association from the U.S. Securities and Exchange Commission (“SEC”), stating that the SEC will not recommend enforcement action if association employees receive the planned referral fee but do not register with a broker-dealer and the association does not register as a broker-dealer;

(3) Solicitation of a person to execute a transaction in a specific security by any registered representative;

(4) Indemnification by the service corporation to a degree greater than the indemnification provided to it by the third-party broker-dealer; and the association is prohibited from indemnifying a third party broker-dealer;

(5) Extension of margin credit by the association to customers of the service corporation or broker-dealer;

(6) Non-registered representatives who are dual or sole employees of the association performing tasks other than clerical for ministerial tasks; prohibited activities include accepting or delivering money or securities and taking orders to execute securities transactions.

(c) Any association that intends to acquire or establish a service corporation to engage in preapproved securities brokerage activities shall furnish to the OTS at least 30 days prior to the commencement of operations, written notice containing a full description of the brokerage services to be provided and a certification from the board of directors of such association that such services will be in compliance with all of the requirements of this section. In addition, the association shall retain complete records of all executed contractual agreements and memoranda between the service corporation and broker-dealers, investment advisors, the parent savings association, and their affiliates, pro forma income statements for a three year period, any required professional opinions, and a reasoned legal opinion from counsel that the securities brokerage services qualify as preapproved under this section.

(d) The Regional Director may request additional information at any time regarding the operations of the service corporation if there are supervisory concerns about the activity, has evidence that the activity may not be in the best interest of the association or service corporation, or has questions as to whether the activities are being conducted in a manner that is preapproved.

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§ 545.91 Home office.

All operations of a Federal savings association shall be subject to direction from the home office.

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.

(b) *Eligibility.* Federal savings associations eligible for expedited treatment pursuant to section 516.3(a) of this chapter may establish a branch of-

fice without prior approval subject to the procedures in paragraph (f) of this section. A Federal savings association subject to standard treatment as defined in §516.3(b) of this chapter shall not establish a branch office without prior approval subject to the procedures in paragraph (e) of this section.

(c) *Application form; filing; completion; supervisory objection.* Applicants shall obtain application and notice forms and related instructions from the OTS.

(d) *Processing of applications/notices.* Processing of applications and notices shall be subject to the following procedures:

(1) *Publication.* (i) A federal savings association must publish a public notice of the branch application or notice in accordance with the procedures specified in subpart B of part 516 of this chapter.

(ii) Promptly after publication of the public notice, the savings association shall transmit copies of the public notice and publisher's affidavit of publication to the OTS.

(iii) The application or notice and all related communications may be inspected by any person at the Regional Office during regular business hours, unless such information is exempt from public disclosure.

(2) *Submission of application or notice.* A Federal savings association must comply with §556.5 of this chapter and shall file the application required under §516.3(b)(2) of this chapter or the notice required under §516.3(a) of this chapter within three days after the publication of the public notice under paragraph (d)(1) of this section.

(3) *Submission of comments.* Commenters may submit comments on the application or notice in accordance with the procedures specified in subpart C of part 516 of this chapter.

(4) *Meetings.* The OTS may arrange informal or formal meetings in accordance with the procedures specified in subpart D of part 516 of this chapter.

(e) *Approval of branch application.* (1) The OTS shall approve an application only if the overall policies, condition, and operation of the applicant afford no basis for supervisory objection and the proposed branch will open within