

Chapter DFI-SB 16

AUTHORIZED ACTIVITIES OF SAVINGS BANKS

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Note: Chapter SB 16 was renumbered ch. DFI-SB 16 under s. 13.93 (2m) (b) 1., Stats., and corrections made under s. 13.93 (2m) (b) 6. and 7., Stats., *Register*, November, 1997, No. 503.

DFI-SB 16.01 Powers of a savings bank. A savings bank may do all of the following:

(1) **THIRD PARTY PAYMENTS.** With or without fee, transfer an accountholder's funds from any account of an accountholder, or pursuant to any credit arrangement with the accountholder in the savings bank or in another financial institution, to a third party or to another account of the accountholder, in accordance with the accountholder's order or authorization. Such transfer may be made by any mechanism or device if the transfer conforms with applicable laws and established commercial practices.

(2) **FEDERAL TAX DEPOSITORY.** Serve as depository for federal taxes or as treasury tax and loan depository subject to regulation of the U. S. treasury department, and as a depository of public money and fiscal agent of the U.S. government or, when designated by an instrumentality and approved by the division, of any other instrumentality of the government.

(3) **DEPOSIT ACCOUNT FEES.** Charge fees in connection with the administration of a deposit account except that a fee or a fee increase may be imposed only if a written, clear and conspicuous disclosure of the fee or fee increase and the method of computing it is delivered to the depositor before the depositor opens the account or mailed to the depositor not less than 30 days prior to the date the fee or fee increase takes effect, whichever is later.

(4) **GOVERNMENT OBLIGATIONS.** Invest in obligations of or issued by any state, territory or possession of the United States or political subdivision of any state, territory or possession, including any agency, corporation or instrumentality. A savings bank may invest in an obligation under this subsection only if the obligation continues to hold one of the 4 highest national investment grade ratings or is issued by a public housing agency and backed by the full faith and credit of the United States, except a savings bank may invest not more than 1% of its assets in obligations of this state or a political subdivision of this state regardless of rating or any other government obligation approved in writing by the division.

(5) **INDIVIDUAL RETIREMENT AND KEOGH PLAN ACCOUNTS.** (a) Act as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension or profit-sharing plan qualifying for specific tax treatment under s. 401 (d) of the internal revenue code or trustee or custodian of an individual retirement account, as defined in s. 408 (a) of the internal revenue code, with no active fiduciary duties if:

1. The savings bank invests the funds only in the savings bank's own accounts, deposits, obligations or securities; or

2. The savings bank invests the funds in such other assets as the customer may direct and the savings bank does not exercise any investment discretion or directly or indirectly provide any investment advice with respect to the trust or account.

(b) A savings bank acting as trustee or custodian pursuant to par. (a) shall include in bold type on the first page of any contract documents the following language: "Funds invested pursuant to this agreement are not insured by the federal deposit insurance corporation ("FDIC") merely because the trustee is an institution the accounts of which are covered by such insurance. Only invest-

ments in the accounts of such an institution are insured by the FDIC, subject to its rules and regulations."

(6) **MONEY MARKET ACCOUNT.** Offer a money market account to the extent permitted by a federally chartered savings and loan or savings bank under 12 USC 1464 (b) and 12. CFR 561.11f or a state chartered savings and loan or savings bank under s. DFI-SL 16.01 (11).

(7) **SALVAGE POWERS.** Accept financial or other assets in satisfaction of a troubled debt or in trade for repossessed property, which assets shall be carried on the savings bank's books at no greater than market value, or take any other actions related to a troubled debt approved in writing by the division. The value of any real property accepted in trade shall be supported by a current appraisal.

(8) **SALE OF NONINSURED FINANCIAL PRODUCTS.** (a) *Authority.* Both through a subsidiary under ch. DFI-SB 15 and directly by the savings bank, sell insurance products (including annuities and life, credit-life, health, property and casualty, unemployment compensation and mortgage guaranty insurance), equity securities (including preferred and common stocks and interests in mutual funds) as agents for the accounts of customers, real estate investment trust interests, corporate and municipal bonds and shares in uninsured brokered deposits.

(b) *Prohibited activities.* 1. Sales by tellers at teller counters. Sales of noninsured financial products described in par. (a) made directly by savings bank personnel may not be sold at a teller counter by a teller or comparable person.

2. Investments in savings bank or subsidiary. To avoid any actual or apparent conflict of interest, no investment advice may be given regarding, nor may transactions be made in, any equity security or debt instrument of the savings bank or any of its service corporations or subsidiaries.

(c) *Disclosure.* When a customer purchases an annuity, equity security, real estate investment trust interest, corporate or municipal bond or share in uninsured brokered deposits from a savings bank or a service corporation or subsidiary, the savings bank, service corporation or subsidiary shall obtain from the customer a signed document in a form prescribed by the division, a copy of which the customer receives, disclosing that the product is not a deposit account and is not insured by a federal insuring agency.

Note: This section interprets or implements ss. 214.03, 214.04 and 214.57, Stats.
History: Cr. *Register*, February, 1994, No. 458, eff. 3-1-94; correction in (6) made under s. 13.93 (2m) (b) 7., Stats., *Register*, December, 1995, No. 480.

DFI-SB 16.02 Election of loan or investment classification. If a savings bank makes an investment or loan under more than one provision of the statutes or this chapter, the savings bank may designate under which section the investment or loan or any portion of either is made and may change its designation at any time.

Note: This section interprets or implements s. 214.03, Stats.

History: Cr. *Register*, February, 1994, No. 458, eff. 3-1-94.

DFI-SB 16.03 Authorized investments. A savings bank may invest its funds in the following:

(1) **MUTUAL FUNDS.** Shares of an open-end investment company, commonly known as a "mutual fund", but limited to 5% of a savings bank's total assets in any one company. The open-end

investment company shall be registered with the federal securities and exchange commission and an individual fund's portfolio shall consist of obligations that are eligible for direct purchase by a savings bank. However, a savings bank may purchase, with the prior written approval of the division, an investment in an open-end investment company containing mortgage-backed, asset-backed or other derivative products. The savings bank shall monitor the open-end investment company's portfolio on a quarterly basis to determine whether an appropriate level of obligations that are eligible for direct purchase by a savings bank is maintained.

Note: This language parallels the authority of federal savings and loan associations and savings banks in 12 CFR 560.32 (formerly 12 CFR 545.76).

(2) COLLATERALIZED MORTGAGE OBLIGATIONS AND REAL ESTATE MORTGAGE INVESTMENT CONDUITS. A collateralized mortgage obligation and a real estate mortgage investment conduit issued by a state or federal agency or by a private issuer. In acquiring and retaining the security, a savings bank shall comply with the federal financial institutions examination council's "Statement of Policy on Securities Activities" originally issued on January 10, 1992 and revised on April 15, 1994. Collateralized mortgage obligations and real estate mortgage investment conduits issued by a private issuer shall be rated in one of the 2 highest categories by a nationally recognized rating service. The maximum purchase of any one private issue is limited to the greater of \$1,000,000 or one percent of a savings bank's total assets. A savings bank may invest in stripped mortgage backed securities or residuals with the prior written approval of the division.

Note: This language parallels the authority of federal savings and loan association and federal savings banks in 12 USC 1464(5)(c)(1)(R) except the last sentence which codifies agency policy.

The FFIEC "Statement of Policy on Securities Activities" is set forth in *FDIC; Law, Regulations and Related Acts* (vol. 2, page 5293) and in the *Federal Guide* (vol. 2, para. 28,499). A copy may be obtained from the division upon request.

(3) MORTGAGE BACKED SECURITIES; MORTGAGE BACKED DEBT. Mortgage backed securities and mortgage backed debt issued by a state or federal agency or by a private issuer. The underlying mortgage loans shall be secured by owner-occupied, one to 4 unit dwellings. Private issues of these securities must be rated in one of the 2 highest categories by a nationally recognized rating service. The maximum purchase of any one private issue is limited to the greater of \$1,000,000 or one percent of a savings bank's total assets.

Note: This language parallels the authority of federal savings and loan associations and savings banks in 12 USC 1464(5)(c)(1)(R) except the last sentence, which codifies this agency's policy.

(4) NON-MORTGAGE DERIVATIVE PRODUCTS AND CONTRACTS. Non-mortgage derivative products and contracts, including interest rate swaps with the prior written approval of the division. Contracts must be U.S. dollar denominated and used for the express purpose of reducing, hedging or managing interest rate risk.

Note: This parallels agency policy for this type of investment for savings and loan associations.

(5) LOAN-BACKED SECURITIES. Securities backed by commercial or consumer loans or loan receivables. If the security is issued by a private source, the security shall be rated in one of the 2 highest categories by a nationally recognized rating service. Privately issued securities are also limited to 10% of unimpaired surplus of a savings bank in any one issuer and aggregate limitations are limited to 10% of total assets of a savings bank when combined with other commercial or consumer loans unless a greater amount is authorized by prior written approval of the division.

Note: This parallels authority in 12 USC 1464(5)(c)(z). The last sentence parallels s. 214.485(9), Stats.

(6) INDUSTRIAL DEVELOPMENT REVENUE BONDS. Industrial development revenue bonds issued under s. 66.1103, Stats. The

bonds shall be secured by a mortgage or security interest in the project and the bond indebtedness may not exceed 75% of the appraised value of the project. Revenues of the project shall be pledged to repay bond interest and principal. The repayment of the bonds shall be guaranteed by an insurance company or financial institution with demonstrated financial ability to repay the liability.

(7) INVESTMENTS IN DEVELOPMENT COMPANIES. A savings bank is authorized to invest, in an amount not to exceed in the aggregate 5% of its capital, in shares of small business investment companies located in this state.

(8) STOCK IN BANK-OWNED BANKS. A savings bank may, with the prior written approval of the division, acquire and hold stock, in an aggregate amount not exceeding 10% of its capital, in one or more of the following:

- (a) A bank chartered under s. 221.1202, Stats.
- (b) A bank chartered under 27 USC 27(b)(1).
- (c) A bank holding company wholly owning a bank under sub. (1) or (2).

Note: This section interprets or implements s. 214.49, Stats. and parallels the long standing agency policy for savings and loan associations.

History: Cr., Register, December, 1995, No. 480, eff. 1-1-96; correction in (6) made under s. 13.93 (2m) (b) 7., Stats; CR 01-056: cr. (7), Register August 2001 No. 548, eff. 9-1-01; CR 02-022: cr. (8), Register, June, 2002, No. 558, eff. 7-1-02.

DFI-SB 16.04 Debt cancellation contracts and debt suspension agreements. (1) DEFINITIONS. In this section:

(a) "Actuarial method" means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from, or any deficiency is added to, the unpaid balance of the amount financed.

(b) "Closed-end credit" means consumer credit other than open-end credit as defined in this section.

(c) "Contract" means a debt cancellation contract or a debt suspension agreement.

(d) "Customer" means an individual who obtains an extension of credit from a savings bank primarily for personal, family or household purposes.

(e) "Debt cancellation contract" means a loan term or contractual arrangement modifying loan terms under which a savings bank agrees to cancel all or part of a customer's obligation to repay an extension of credit from that savings bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents.

(f) "Debt suspension agreement" means a loan term or contractual arrangement modifying loan terms under which a savings bank agrees to suspend all or part of a customer's obligation to repay an extension of credit from that savings bank upon the occurrence of a specified event. The agreement may be separate from or a part of other loan documents. "Debt suspension agreement" does not include loan payment deferral arrangements in which the triggering event is the borrower's unilateral election to defer repayment or the savings bank's unilateral decision to allow a deferral of repayment.

(g) "Open-end credit" means consumer credit extended by a savings bank under a plan in which:

1. The savings bank reasonably contemplates repeated transactions;
2. The savings bank may impose a finance charge from time to time on an outstanding unpaid balance; and
3. The amount of credit that may be extended to the customer during the term of the plan, up to any limit set by the savings bank, is generally made available to the extent that any outstanding balance is repaid.

(h) “Residential mortgage loan” means a loan secured by 1–4 family, residential real property.

(i) “Savings bank” has the meaning set forth in s. 214.01 (1) (t), Stats.

(2) PROHIBITED PRACTICES. (a) *Anti-tying.* A savings bank shall not extend credit or alter the terms or conditions of an extension of credit conditioned upon the customer entering into a debt cancellation contract or debt suspension agreement with the savings bank.

(b) *Misrepresentations generally.* A savings bank shall not engage in any practice or use any advertisement that is false, misleading or deceptive, or which omits to state material information, or otherwise would cause a reasonable person to reach an erroneous belief with respect to information that may be disclosed under this section.

(c) *Prohibited contract terms.* A savings bank shall not offer debt cancellation contracts or debt suspension agreements that contain any of the following:

1. Terms giving the savings bank the right unilaterally to modify the contract unless the modification is favorable to the customer and is made without additional charge to the customer, or the customer is notified of any proposed change and is provided a reasonable opportunity to cancel the contract without penalty before the change goes into effect.

2. Terms requiring a lump sum, single payment for the contract payable at the outset of the contract, where the debt subject to the contract is a residential mortgage loan.

(3) REFUNDS OF FEES IN THE EVENT OF TERMINATION OR PREPAYMENT OF THE COVERED LOAN. (a) *Refunds.* If a debt cancellation contract or debt suspension agreement is terminated, including when the customer prepays the covered loan, the savings bank shall refund to the customer any unearned fees paid for the contract unless the contract provides otherwise. A savings bank may offer a customer a contract that does not provide for a refund only if the savings bank also offers that customer a *bona fide* option to purchase a comparable contract that provides for a refund.

(b) *Method of calculating refund.* The savings bank shall calculate the amount of a refund using a method at least as favorable to the customer as the actuarial method.

(4) METHOD OF PAYMENT OF FEES. Except as provided in sub. (2) (c) 2., a savings bank may offer a customer the option of paying the fee for a contract in a single payment, provided the savings bank also offers the customer a *bona fide* option of paying the fee for that contract in monthly or other periodic payments. If the savings bank offers the customer the option to finance the single payment by adding it to the amount the customer is borrowing, the savings bank shall also disclose to the customer, in accordance with sub. (5), whether and, if so, the time period during which, the customer may cancel the agreement and receive a refund.

(5) DISCLOSURES. (a) *Content of short form of disclosures.* The short form of disclosures required by this section shall include information relating to any of the following that is appropriate to the product offered:

1. That the product is optional.
2. Lump sum payment of fee.
3. Lump sum payment of fee with no refund.
4. Refund of fee paid in lump sum.
5. Any additional disclosures.
6. Eligibility requirements, conditions and exclusions.

(b) *Content of long form disclosures.* The long form of disclosures required by this section shall include information relating to any of the following that is appropriate to the product offered:

1. That the product is optional.
2. An explanation of debt suspension agreement.
3. The amount of fee.

4. Lump sum payment of fee.

5. Lump sum payment of fee with no refund.

6. Refund of fee paid in lump sum

7. Use of card or credit line restricted.

8. Termination of product.

9. Eligibility requirements, conditions and exclusions.

Note: Copies of the short and long form, and instructions for using them may be obtained by writing to the Department of Financial Institutions, Division of Banking, P.O. Box 7876, Madison, WI 53707–7876 or by downloading it from the department’s website, www.wdfi.org. Short form disclosures made in a form that is substantially similar to the disclosures available from the department will satisfy the short form disclosure requirement of this section. Long form disclosures made in a form that is substantially similar to the disclosures available from the department will satisfy the long form disclosure requirements of this section.

(c) *Disclosure requirement, and timing and method of disclosures.* 1. ‘Short form disclosures.’ The savings bank shall make the short form disclosures orally at the time the savings bank first solicits the purchase of a contract.

2. ‘Long form disclosures.’ The savings bank shall make the long form disclosures in writing before the customer completes the purchase of the contract. If the initial solicitation occurs in person, the savings bank shall provide the long form disclosures in writing at that time.

3. ‘Transactions by telephone.’ If the contract is solicited by telephone, the savings bank shall provide the short form disclosures orally and shall mail the long form disclosures, and, if appropriate, a copy of the contract to the customer within 3 business days, beginning on the first business day after the telephone solicitation.

4. ‘Solicitations using written mail inserts or “take one” applications.’ If the contract is solicited through written materials such as mail inserts or “take one” applications, the savings bank may provide only the short form disclosures in the written materials if the savings bank mails the long form disclosures to the customer within 3 business days, beginning on the first business day after the customer contacts the savings bank to respond to the solicitation, subject to the requirements of sub. (6) (c).

5. ‘Electronic transactions.’ Disclosures described in this section provided through electronic media shall be in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 *et seq.*

(d) *Form of disclosures.* 1. ‘Understandable disclosures.’ The disclosures required by this section shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided.

2. ‘Meaningful disclosures.’ The disclosures required by this section shall be in a meaningful form.

Note: The following are examples of means that call attention to the nature and significance of the information provided in the disclosure: a plain language heading to call attention to the disclosures; typeface and type size that are easy to read; wide margins and ample line spacing; boldface or italics for key words; and distinctive type style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(e) *Advertisements and other promotional material for debt cancellation contracts and debt suspension agreements.* The short form disclosures are required in advertisements and promotional material for contracts unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the savings bank.

(6) AFFIRMATIVE ELECTION TO PURCHASE AND ACKNOWLEDGEMENT OF RECEIPT OF DISCLOSURES REQUIRED. (a) *Affirmative election and acknowledgement of receipt of disclosures.* Before entering into a contract the savings bank shall obtain a customer’s written affirmative election to purchase a contract and written acknowledgement of receipt of the disclosures required by s. DFI–Bkg 3.08 (5) (b). The election and acknowledgement information shall be conspicuous, simple, direct, readily understandable, and designed to call attention to their significance. The elec-

tion and acknowledgement satisfy these standards if they conform with the requirements in s. DFI-Bkg 3.08 (5) (d).

(b) *Telephone solicitations.* If the sale of a contract occurs by telephone, the customer's affirmative election to purchase may be made orally, provided the savings bank does all of the following:

1. Maintains sufficient documentation to show that the customer received the short form disclosures and then affirmatively elected to purchase the contract.

2. Mails the affirmative written election and written acknowledgement, together with the long form disclosures required by sub. (5), to the customer within 3 business days after the telephone solicitation, and maintains sufficient documentation to show it made reasonable efforts to obtain the documents from the customer.

3. Permits the customer to cancel the purchase of the contract without penalty within 30 days after the savings bank has mailed the loan form disclosures to the customer.

(c) *Solicitations using written mail inserts or "take one" applications.* If the contract is solicited through written materials such as mail inserts or "take one" solicitations and the savings bank provides only the short form disclosures in the written materials, then the savings bank shall mail the acknowledgment of receipt of disclosures, together with the long form disclosures required by sub. (5), to the customer within 3 business days, beginning of the first business day after the customer contacts the savings bank or otherwise responds to the solicitation. The savings bank may not obligate the customer to pay for the contract until after the savings bank has received the customer's written acknowledgment of receipt of disclosures unless the savings bank does all of the following:

1. Maintains sufficient documentation to show that the savings bank provided the acknowledgement of receipt of disclosures to the customer as required by this section.

2. Maintains sufficient documentation to show that the savings bank made reasonable efforts to obtain from the customer a written acknowledgement of receipt of the long form disclosures.

3. Permits the customers to cancel the purchase of the contract without penalty within 30 days after the savings bank has mailed the long form disclosures to the customer.

(d) *Electronic election.* An affirmative election and acknowledgement made electronically shall be in a manner consistent with the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 *et seq.*

(7) SAFETY AND SOUNDNESS REQUIREMENTS. A savings bank shall manage the risks associated with debt cancellation contracts and debt suspension agreements in accordance with safe and sound savings banking principles. Accordingly, a savings bank shall establish and maintain effective risk management and control processes over its debt cancellation contracts and debt suspension agreements. Such processes include appropriate recognition and financial reporting of income, expenses, assets and liabilities, and appropriate treatment of all expected and unexpected losses associated with the products. A savings bank shall also assess the adequacy of its internal control and risk mitigation activities in view of the nature and scope of its debt cancellation contract and debt suspension agreement programs.

Note: This section takes effect on April 1, 2006, except for those provisions comparable to the provisions of 12 CFR sec. 37 that are subject to a delayed effective date by the United States Office of the Comptroller of Currency. These provisions shall become effective when the comparable provisions of 12 CFR sec. 37 become effective. The administrator for the division of banking shall issue interpretive letters confirming which provisions of this section have become effective and the effective date of these provisions.

History: CR 05-045: cr. Register January 2006 No. 601, eff. 4-1-06.