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October 5, 2000

Communications Division
Office of the Comptroller of the Currency
250 E Street, S.W.
Third Floor
Washington, D.C. 20219
[Docket No. 00-16]

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
[RIN 3064-AC37]

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Ms. Jennifer J. Johnson
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
[Docket No. R-1079]

Manager, Dissemination Branch
Office of Thrift Supervision
Information Management & Services Div.
1700 G Street, N.W.
Washington, D.C. 20552
[Docket No. 2000-68]

Re: Consumer Protections for Depository Institution Sales of Insurance
65 Fed. Reg. 50881 (August 21, 2000)

Dear Sir or Madam:

America's Community Bankers ("ACB") is pleased to comment on the proposed interagency rule ("Proposed Rule") implementing the depository institution insurance sales consumer protections mandated by Title III, Section 305, of the Gramm-Leach-Bliley Act of 1999 (the "GLBA").¹ The GLBA requires that the federal banking regulatory agencies (the "Agencies") jointly prescribe and publish consumer protection regulations governing retail sales practices, solicitations, advertising, or offers of insurance products by depository institutions and persons that are engaged in such activities at an office of, or on behalf of, depository institutions.² ACB represents the nation's community banks of all charter types and sizes. ACB members pursue progressive, entrepreneurial and service-oriented strategies in providing financial services to benefit their customers and communities.

Proposed Rule

The Proposed Rule establishes consumer protection regulations governing retail sales practices, solicitations, advertising or offers of insurance products by depository institutions or persons engaged in such activities at an office of, or on behalf of, that institution. Section 305 requires that the Agencies include specific provisions relating to sales practices, disclosures and advertising, as well to the physical separation of banking and non banking activities. The

¹ 65 Fed. Reg. 50881 (August 21, 2000).

² Pub. L. No. 106-102, Title III, Section 305 (November 12, 1999).

Proposed Rule also prohibits in the sale of certain types of insurance discrimination against domestic violence victims and others who assist such victims.

ACB Position

ACB supports the Agencies' efforts at developing appropriate regulations to implement the Section 305 mandate. We believe that the final regulations should enable depository institutions to provide retail consumers of insurance and annuity products with appropriate disclosures that are easy to understand and meaningful in relation to the products being sold. Moreover, the Proposed Rule should not disadvantage depository institutions vis-à-vis non-depository institutions.

Generally, we believe the mandated, proposed regulations meet the requirements of the GLBA and do not, for the most part, thwart efforts to balance the competitive goals of depository institutions with the need for adequate consumer protections and reasonable, standardized rules governing the sales of these products and services. Our specific suggestions and comments, and responses to questions raised in the proposal, are included below.

Section 10 – Purpose and Scope

ACB supports the Agencies' decision limiting the applicability of the Proposed Rule to only those depository institution subsidiaries that are selling at a location of, or on behalf of, their parent.

Section 20 – Definitions

With respect to the proposed definition of "consumer," ACB believes that the purpose of Section 305, which is intended to insure appropriate disclosures to individual persons purchasing insurance products, is better served by defining "consumer" to exclude small businesses. The term should include only individual persons who obtain, apply for, or are solicited to obtain insurance products or annuities from covered persons, and when used primarily for personal, family or household purposes.

As currently drafted, we believe the proposed "on behalf of" test includes factors that are not relevant in determining when an entity is, in fact, a covered person. In particular, the third and fourth prongs of the test focus on corporate logos and names. The use of either parent holding company or depository institution names and logos, in and of itself, should not be a determinative factor in applying this test. Restricting the use of corporate logos will not further the agencies' mandate of preventing customer confusion. Rather, the "on behalf of" test should focus on whether, based on all the facts and circumstances, another person can be seen as engaged in an activity, making representations or otherwise acting to suggest that the person is acting on behalf of a depository institution. As a result, we recommend that the third and fourth prongs be eliminated and the first prong be revised to incorporate the presumed intent of these elements. The test should be revised to read in relevant part:

For purposes of this definition, a person's activities are "on behalf of" a depository institution if:

- (1) The person represents to a consumer, whether orally or by written or electronic communications, that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the depository institution.

ACB believes eliminating this ambiguity from the proposed test will facilitate clearer understanding of when the rules apply.

We encourage the Agencies to conclude that the Proposed Rule would not apply in situations where depository institutions, or subsidiaries thereof, are serving as "finders," i.e., bringing buyers and sellers of insurance and annuity products together for transactions the parties themselves negotiate and consummate.³ When serving a finder, a bank is not engaged in the advertising, sale or solicitation of a product or service, but is serving as a medium through which buyer and seller meet. As a result, these activities would fall outside the scope of the Proposed Rule.

Finally, in order to accommodate future developments, the proposed definition of "electronic media" should be revised to read, "[e]lectronic media includes any medium through which information is transmitted electronically between a covered person and a consumer, and which allows visual text to be displayed."

Section 30 – Prohibited Practices

ACB believes the Agencies have identified an appropriate list of activities that should be identified as prohibited practices.

Section 40 – What a Covered Person Must Disclose

ACB urges the Agencies to confirm in the Final Rule that the proposed list of disclosure statements contained in Section 40 is illustrative and not mandatory in every disclosure setting. Doing so will enable institutions to tailor individual disclosures in the most appropriate and informative manner. This is necessary in order to provide meaningful and accurate disclosures with respect to the products being sold.⁴

ACB supports incorporating the standards and requirements of the Electronic Signatures in Global and National Commerce Act (the E-Sign Act)⁵ and encourages the Agencies to confirm in the Final Rule that disclosures provided in conformity with the E-Sign Act will meet the electronic disclosure requirements of the Proposed Rule. This will avoid duplicative regulation,

³ 12 C.F.R. § 7.1002; *see also*, OCC Interpretive Letter No. 856 (March 1, 1999); OCC Corporate Decision No. 97-60 (July 1, 1997).

⁴ For example, many insurance products include an investment risk factor but a disclosure would be appropriate only in settings where the investment risk falls to the consumer and not to the insurer.

⁵ Pub. L. No. 106-229 (June 30, 2000).

produce more uniform electronic documentation, which will result in increased efficiency and cost savings in the delivery of these and other financial products and services.

Sections 50 (Where Insurance Activities May Take Place) and 60 (Qualification and Licensing Requirements for Insurance Sales Personnel)

ACB believes that the locational guidelines, as contained in proposed Section 50, should offer guidance on setting and separation while recognizing that actual implementation of these requirements necessarily will vary as a result of location, space and other practical limitations. Equally important, these guidelines should mirror existing separation requirements required by the 1994 Interagency Statement on Retail Sales of Nondeposit Investment Products, thus avoiding unnecessary duplication. With respect to the qualification and licensing requirements, ACB supports an appropriate licensing scheme that does not place additional or unfair licensing requirements or restrictions on employees of depository institutions as compared with non-depository institution employees.

Conclusion

ACB appreciates the opportunity to comment on this important matter and supports the Agencies in their efforts to provide effective consumer protections relating to the sale of insurance and annuity products. We stand ready to work with the Agencies to implement the final rule.

If you have any questions, please contact the undersigned at (202) 857-3121 or cbahin@acbankers.org, or Michael W. Briggs at (202) 857-3122 or mbriggs@acbankers.org.

Sincerely,



Charlotte M. Bahin
Director of Regulatory Affairs and
Senior Regulatory Counsel