



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2001-10
May 2001

April 23, 2001

Mary K. Walter, Esq.
Bank One, N.A.
1 Bank One Plaza
Mail Code IL 1 -0286; 1-11
Chicago, IL 60670

Re: Bank One, N.A., Columbus, Ohio (“Bank”)
Application Control No. 2001-ML-08-0005

Dear Ms. Walter:

This letter is in response to the Bank’s operating subsidiary application dated February 21, 2001, submitted to the Office of the Comptroller of the Currency (“OCC”). The Bank previously acquired Congress Life Insurance Company (“OpSub”) as a 100%-owned subsidiary of the Bank. The Bank now plans for OpSub to reinsure credit life and credit-related health and disability insurance (“credit-related insurance products”) in connection with loans to customers made by the Bank and affiliated and unaffiliated lenders.

With the passage of the Gramm-Leach-Bliley Act of 1999 (“GLBA”), the OCC revised its operating subsidiary regulation effective March 11, 2000. Consistent with the procedures therein, the Bank submitted this application under 12 C.F.R. § 5.34(e)(5)(i)(A) because reinsurance of these credit-related insurance products is not currently listed as an enumerated activity eligible for a notice filing. For the reasons discussed below, we conclude that the proposed operating subsidiary activities are permissible under the GLBA, and therefore the application is approved.

I. Background

The Bank acquired the OpSub on October 23, 2000, from its parent, Security Life Insurance Company of America, a Minnesota corporation.¹ The OpSub is an Arizona corporation with

¹ See Letter from Mary K. Walter, Legal Counsel, to the OCC Licensing Manager dated November 2, 2000 notifying the OCC under 12 C.F.R. § 5.34(e)(5)(v)(L) of the Bank’s acquisition of OpSub to engage in underwriting credit-related life, health, and disability insurance activities to the extent permitted under GLBA section 302.

operations also based in Milwaukee, Wisconsin and plans to conduct its activities from offices in both states. The OpSub is managed by individuals that are current officers of the Bank and certain affiliates. The OpSub holds various insurance licenses from numerous states for life, health and disability insurance, and will obtain any additional licenses as necessary.² The OpSub plans to engage in credit-related reinsurance activities for products underwritten by an unaffiliated insurance company. The unaffiliated insurance company will provide administrative functions, including the booking of the business, payment of claims, and certain reporting and regulatory functions. The OpSub will maintain separate books and records, including corporate and accounting records, from the unaffiliated insurance company.

II. Discussion

A. GLBA Section 302 Preserves the Ability of National Banks and their Subsidiaries to Provide Insurance as Principal under Certain Circumstances

Under Section 302 of the GLBA, national banks and their subsidiaries may provide “authorized products” but may not otherwise provide insurance as principal. The statutory language provides in relevant part:

(a) In General.--...a national bank and the subsidiaries of a national bank may not provide insurance in a State as principal except that this prohibition shall not apply to authorized products.

(b) Authorized Products.--For the purposes of this section, a product is authorized if--

- (1) as of January 1, 1999, the Comptroller of the Currency had determined in writing that national banks may provide such product as principal, or national banks were in fact lawfully providing such product as principal;
- (2) no court of relevant jurisdiction had, by final judgment, overturned a determination of the Comptroller of the Currency that national banks may provide such product as principal; and
- (3) the product is not title insurance, or an annuity contract the income of which is subject to tax treatment under section 72 of the Internal Revenue Code of 1986.

(c) Definition.--For purposes of this section, the term “insurance” means--

- (1) any product regulated as insurance as of January 1, 1999, in accordance with the relevant State insurance law, in the State in which the product is provided;
- (2) any product first offered after January 1, 1999, which--

² Attached to the February 21, 2001 operating subsidiary application is a full list of the state licenses and lines of business.

(A) a State insurance regulator determines shall be regulated as insurance. . . .³

Thus, the GLBA preserves the ability of national banks and their subsidiaries to provide as principal insurance products previously authorized by the OCC as of January 1, 1999.⁴

B. OCC Previously Authorized National Banks and their Subsidiaries to Provide Credit-Related Reinsurance Products

Section 302's language plainly states that a product is "authorized" if as of January 1, 1999, the OCC had determined in writing that national banks may provide the product as principal, or national banks were lawfully providing the product as principal and a court of competent jurisdiction had not overturned an OCC decision permitting national banks to offer the product. In addition, the product may not be title insurance or a specified type of annuity contract.

Credit-related reinsurance products protect insurers from financial losses should the risks they have underwritten result in greater losses than what was assumed when the risks were accepted.⁵

Credit-related products in this context guarantee or secure payment of an outstanding obligation in a credit transaction in the event that the borrower is unable to pay, *e.g.*, because of death, disability, or unemployment.⁶

The OCC had established the authority of national banks and their subsidiaries to reinsure credit-related products as part of, or incidental to, the business of banking prior to January 1, 1999.⁷ This included providing credit-related reinsurance products in connection with loans by the bank itself and by lenders other than the bank. For example, in Interpretive Letter No. 835, the OCC determined that it was permissible for national banks, through their operating subsidiaries, to reinsure loans originated by otherwise unaffiliated lenders having a common ownership interest in a non-controlling entity with the bank's subsidiary.⁸ These determinations had not been

³ Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338, § 302(a), (b), and (c) (Nov. 12, 1999).

⁴ The GLBA also sets new standards for the application of state law to insurance activities of depository institutions, including national banks and their subsidiaries. *See, e.g.*, 15 U.S.C. § 6701 (GLBA Section 104).

⁵ *See generally* 1 Couch on Insurance § 9.1 *et seq.* (3d ed.).

⁶ Certain other insurance arrangements also could be considered "credit-related." *See, e.g., Independent Insurance Agents of America v. Hawke*, 211 F.3d 638, 641 (D.C. Cir. 2000) (distinguishing "credit-related insurance products" as specialized types of products that name the bank as beneficiary not the bank customer, from other forms of insurance).

⁷ *See, e.g.*, Corp. Decision No. 98-28 (May 11, 1998) (authorizing reinsurance of credit life, disability, and involuntary unemployment insurance products); Corp. Decision No. 97-92 (Oct. 17, 1997) (authorizing reinsurance of credit disability and involuntary unemployment insurance products); Interpretive Letter No. 277 (Dec. 13, 1983) (authorizing reinsurance of credit life insurance products as a logical complement to a national bank's power to sell credit life); *see also* 12 C.F.R. Part 2 (Sales of Credit Life Insurance); *IBAA v. Heimann*, 613 F.2d 1164 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 823 (1980) (confirming OCC's authority to adopt its credit life insurance regulation at 12 CFR Part 2).

⁸ Interpretive Letter No. 835 (July 31, 1998); *see also* Corp. Decision No. 97-92 (Oct. 17, 1997) (authorizing reinsurance of credit-related products in connection with loans of the bank's affiliate).

overturned by any court as of January 1, 1999 (or thereafter). Hence, credit-related reinsurance satisfies Section 302's statutory requirements as an authorized product.⁹

III. Conclusion

The authorized product exception of Section 302 of GLBA preserves the ability of national banks and their subsidiaries to provide as principal certain insurance products previously authorized by the OCC. The OCC previously had authorized national banks and their subsidiaries to provide credit-related reinsurance products as principal. Thus national banks and their subsidiaries may offer credit-related reinsurance products in connection with their own loans and those of affiliated and unaffiliated lenders. The GLBA preserved this authority for national banks and their operating subsidiaries.

Accordingly, based on the facts and analysis herein, and the representations and commitments made by the Bank in connection with this application, the Bank's operating subsidiary is authorized to engage in the proposed credit-related reinsurance activities and the Bank's application is approved. If you have any questions, please contact Richard Erb, Licensing Manager, Large Banks, at 202/874-5060, or Suzette H. Greco, Special Counsel, in the Securities and Corporate Practices Division, at 202/874-5210.

Sincerely,

-signed-

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

⁹ Broader categories of reinsurance also might be viewed as a separate authorized category of insurance; however, at the very least, as is the case here, any credit-related reinsurance is an authorized product for purposes of section 302. *See also* Corp. Decision No. 2000-16 (Aug. 29, 2000) (reinsurance of credit-related insurance products); Interpretive Letter No. 886 (Mar. 27, 2000) (underwriting of credit-related insurance products)