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October 4, 2000

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551
Attention: Docket No. R-1079

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

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

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

Re: Proposed Rule on Consumer Protections for Depository Institution Sales of Insurance

Dear Sir or Madam:

Fleet Boston Financial Corporation ("Fleet"), on behalf of its principal bank subsidiary, Fleet National Bank (the "Bank"), is pleased to offer the following comments in response to the above-referenced notice of proposed rulemaking (the "Proposal"). The Proposal is jointly issued by the federal banking agencies (the "Agencies") pursuant to Section 305 of the Gramm-Leach-Bliley Act (the "GLB Act" or "Act") which requires the Agencies to publish a final rule on this subject by November 12, 2000.

The Bank currently makes insurance and annuity products available to its customers through various subsidiary agencies in accordance with applicable state and federal law. The following comments are intended to further the Agencies' effort to develop a final rule that both provides strong consumer safeguards and affirms a bank's ability to engage in insurance sales activities.

While Fleet recognizes that the Agencies are required by the GLB Act to issue these regulations, the Act does not contemplate an over-expansion of the existing regulatory

framework for national bank insurance sales. The purpose of the Proposal, therefore, should be to codify the established regulatory guidelines as they apply to *insurance* as directed by Section 305 of the GLB Act. Fleet is concerned that the Proposal goes beyond this well-established guidance for insurance sales and is inconsistent with Section 305. Such an extension of the breadth and reach of the existing supervisory guidance could pose a setback to the banks that have made substantial investments in internal insurance operations and well established programs with third party providers.

The final rule must provide consumers with strong protections against misrepresentations and coercive practices and provide banks with the flexibility necessary to compete with and market insurance on the same terms as non-bank providers. To this end, Fleet makes the following recommendations which are more fully explained below. The Proposal should:

- not apply to annuity or credit related products;
- only cover individual consumers and not commercial buyers;
- make application of the final rule dependent on the setting and circumstances of the solicitation as opposed to the position of person engaging in the insurance activity;
- define the term "solicit" and not define the term "insurance";
- amend language pertaining to the timing of the required disclosures so that they need not be provided more than once;
- be amended to eliminate oral disclosures in the case of direct mail solicitations and to eliminate written disclosures in the case of telephone solicitations;
- exclude online marketing of insurance by non-bank providers through bank channels provided that consumers receive clear and conspicuous notification that they are communicating with a non-bank provider.

These comments are presented in more detail below in the order in which they appear in the Proposal.

Purpose and Scope

The purpose of Section 305 of the GLB Act is to direct the Agencies to codify existing federal guidance on the sale of insurance products only. As proposed, "*Section ___. 10 Purpose and Scope*", would extend the regulation to annuity products. This would extend the scope of the rule beyond that envisioned by Section 305. Section 305 directs the Agencies to issue customer protection regulations that "apply to ...offers of any

insurance product by any depository institution ..." (emphasis added).[1] The section does not mandate rules that would govern the offering of annuity products through banks.

The Proposal's Section-by-Section Analysis correctly states that:

> [t]hese proposed rules are not intended to have any effect on whether annuities are considered to be insurance products for purposes of any other section of the G-L-B Act or other laws. That question depends on the terms and purposes of those laws, as interpreted by the courts and the appropriate agency.

We agree that the Proposal should have no effect on that question since it has already been answered by the Supreme Court in the case of *NationsBank of North Carolina v. Variable Annuity Life Insurance Co.*[2] In that case the Court determined that the Comptroller of the Currency reasonably concluded that annuities were not insurance since they are "functionally similar to other investments that banks typically sell" and banks, in offering annuities, "are essentially offering financial investments of the kind congressional authority permits them to broker."[3] Including annuities in the regulation risks confusing this issue as the rule is interpreted by the Agencies and the courts in the future. We therefore request that the scope of the proposed regulation be limited to apply only to *insurance products* as required by the GLB Act and exclude the sale of annuities as defined by the Supreme Court. The sale of annuities by national banks will continue to be subject to existing federal rules and guidelines that provide all of the relevant consumer protections afforded by the Proposal.

We also request that the Agencies expressly exclude credit-related insurance products from the scope of the regulation. Credit insurance is a bank permissible credit product. The OCC has long held that credit insurance sales and underwriting are part of the business of banking pursuant to 12 U.S.C. 24 (Seventh)[4]. Indeed, under the GLB Act, Congress acknowledged this distinction by excluding credit related insurance from the insurance underwriting prohibitions applicable to national banks. Also, in earlier federal laws restricting the insurance activities of banking organizations, Congress chose to exempt credit insurance from such limitations.[5] Imposing these additional rules on the sale of credit insurance would be duplicative and overlap with existing federal law that already prescribes stringent consumer protections on credit insurance sales.[6] At a minimum, the Agencies should codify the ruling in the NationsBank decision in the final regulation to eliminate the risk of confusing the established precedent on annuity and insurance products.

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[1] Section 305 of the Gramm-Leach-Bliley Act, Pub. L. 106-102, enacted on November 12, 1999.
[2] *NationsBank of North Carolina v. Variable Annuity Life Insurance Co.*, 115 S. Ct. 810 (1995).
[3] *Id. at 817.*
[4] *See*, 12 C.F.R. § 2.1; OCC Interpretive Letter No. 277 (Dec. 21, 1983), reprinted in [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH), ¶ 85, 441.
[5] *See*, the Garn-St Germain Act, P.L. 97-320. The Act excepts credit insurance from the insurance restrictions imposed on bank holding companies.
[6] Section 106(b) of the Bank Holding Company Act Amendments prohibit banks from tying credit insurance with an extension of credit.

Definitions

Certain definitions in the Proposal should be amended to clarify the intended meaning.

Consumer. The Agencies' specifically request comment on whether the definition of "consumer" should be expanded to encompass all retail customers, including commercial customers. It should not.

We believe that the definition should refer only to individuals who obtain or apply for insurance products primarily for personal, family, or household purposes. There is no language in the GLB Act to indicate a congressional intent that businesses be covered under the mandated rule. In fact, provisions regarding disclosures, advertising, separation of banking from non-banking activities, anti-tying and anti-coercion prohibitions are by their nature geared to protecting individual consumers, not sophisticated commercial purchasers of insurance products. Moreover, to be forced to provide such disclosures to commercial purchasers would be so cumbersome and awkward as to put the Bank at a competitive disadvantage with other vendors of similar products. We request that the definition of "consumer" be given its plain and customary meaning to be consistent with the intent of Congress.

Covered Person. We believe that the best way to meet the Act's goal of avoiding customer confusion or abusive sales practices is to trigger the rule's requirements on the setting and circumstance of the transaction as opposed to the person engaged in the activity. For example, face to face solicitations at a bank office that accepts deposits and extends credit would pose the kinds of risks that the GLB Act is designed to protect against. However, when a bank's website provides consumers with a link to a non-bank insurance provider, the regulation should allow a simplified disclosure that requires customers to acknowledge that they are leaving the bank's website and proceeding to the website of a separate insurance provider. The act of "leaving" the bank's website removes the risk of the customer mistaking the insurance products offered as bank-sponsored or deposit-insured products.

The definition of "covered person" includes several related elements that merit comment as described below:

> Use of Holding Company Name or Logo. The Agencies' specifically request comment on whether reference to the name or corporate logo of the holding company or other affiliate, as opposed to the name or corporate logo of the depository institution, in documents evidencing the sale, solicitation, advertising, or offer of an insurance product should characterize an activity as one done *on behalf* of the depository institution, and thus deem any person making such a reference a *covered person*. It should not. Whether insurance is being offered by the bank's subsidiary, or an affiliated or unaffiliated agency or company, the mere use of the name or the corporate logo of the holding company would not in itself confuse the customer or create a risk of abusive sales practices by the bank of the

type which the anti tying and coercion prohibitions are designed to avoid. When an offer of insurance is being made by a non-bank entity, a reference to the holding company should not cause the transaction to be subject to the Proposal.

Revenue Sharing Between Banks and Insurance Providers. Revenue-sharing, such as commission or fee-splitting arrangements, should not be a governing factor in the determination of a "covered person". Non-bank subsidiaries or affiliates that sell insurance sometimes share sales revenue with banks. Although a bank may ultimately receive a benefit through the revenue generated by its subsidiary agency, or share fees with an affiliated or unaffiliated agency or company, the customer is not aware of those details. In this case, providing disclosures stating that insurance products are "*Not a Deposit; Not FDIC-Insured; Not Insured by any Federal Government Agency; Not Guaranteed by the Bank; and May Go Down in Value*" only creates unnecessary confusion and anxiety because the customer is not dealing with the bank. Therefore, we request that commission or fee-sharing not be included as a factor in the definition of "covered person".

Location of Solicitation Activity. Similarly, "location" should not be a governing factor in the determination of "covered person" as proposed under the rule as this too would only cause customer confusion and not provide any additional consumer protection. For example, if a bank customer is considering the purchase of an insurance product from an affiliated or unaffiliated provider at a location that is off the premises of the bank's deposit and lending offices, the provider's presentment of the proposed consumer disclosures and acknowledgments would cause confusion since customers will question what relation the bank has to the insurance transaction. The risk of coercive product-tying or giving the customer the impression that insurance products are FDIC insured is extremely remote when the insurance sales are conducted where lending and deposit taking activities do not occur. Therefore, we request that the final regulations not apply in situations where the product is sold at a location where deposits and no credit is extended. As stated above, this should be so regardless of whether the location incorporates reference to the parent holding company by way of names or corporate logos.

Use of Electronic Media. We agree with the Agencies' view that the mandatory disclosures and other protections of the proposed rules are not necessary when a bank utilizes electronic media to market insurance products. For example, in situations where a bank's website contains links to non-bank insurance providers, whether affiliated or unaffiliated with the bank, there is no risk of customer confusion or abusive sales practices to be mitigated by additional consumer disclosures provided that customers are notified when, and acknowledge that, they are leaving the bank's website and thereafter communicating with a separate insurance provider. Similarly, a bank should not be considered a "covered person" in situations where it acts as a "finder" by providing consumers with weblinks to non-bank insurance providers. Further, such providers should not be considered "covered persons" unless they represent to the consumer that the

solicitation or sale is "on behalf of" a depository institution. This reasoning should apply even if the customer were to link to an insurance provider through a bank's website from a computer located in a bank's branch office. The risk of customer confusion is eliminated provided that a bank's website clearly notifies customers when they are leaving the site.

Solicit. The Agencies should take this opportunity to eliminate the existing confusion over the meaning of the term "solicit". The Agencies should define it in accordance with the commonly held meaning "to seek or obtain by persuasion, entreaty, or formal application."[7] In doing so, "solicit" should also be identified with the term "offer" since solicit connotes a formal offer or attempt to persuade a person to purchase something. For example, a bank employee may simply make a customer aware that an insurance product or program is available through the bank, by verbal means or offering a brochure, and then directing that (interested) customer to a licensed sales agent. This should not rise to the level of offering or persuading the customer to purchase insurance. An "offer" occurs during the process of examining the policy terms, benefits and suitability factors. Providing a standard definition for the term "solicit" and identifying it with the term "offer" will allow an unlicensed bank teller to initiate a brief dialogue with a customer for the purpose of informing the customer that insurance products are available and then directing that customer to a licensed agent. The final regulation should clearly provide that this is not an act that requires state licensure since it is not a solicitation or an offer to purchase insurance.

Insurance. We agree that the Agencies should not attempt to impose a single definition of "insurance" and instead look to a variety of sources when determining whether a given product is covered by the proposed rules. We request, however, that the Agencies provide clarification as to which products are not insurance under the regulation. For the reasons given above, we request that annuity and credit-related products be excluded from the scope of the proposed rule.

Disclosures

The Proposal requires that certain disclosure be presented to customers. Two provisions require modification.

Timing. *"Section _____.40(b)"* requires that:

> "The disclosures required by... this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a

[7] This is the definition found in *The American Heritage® Dictionary of the English Language, Third Edition* copyright 1992 by Houghton Mifflin Company.
[8] Garn-St Germain Act, P.L. 97-320. The Act excepts credit insurance from the insurance restrictions imposed on bank holding companies.
[9] Section 106(b) of the Bank Holding Company Act Amendments prohibit tying credit insurance with an extension of credit.

> consumer...The disclosure required by... this section must also be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity will be solicited, offered, or sold. If a covered person takes an application for such credit by telephone, the covered person may provide the written disclosure required by.. this section by mail...".

The proposed language appears to require that a credit applicant be asked to acknowledge the disclosure twice: once when applying for credit and a second time when being offered insurance. The disclosure and customer acknowledgement should only be required once: when the insurance offer is made. The Proposal should be amended to clarify this point.

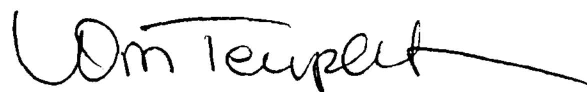
Telephone and Direct Mail. The Proposal provides for an exception to the requirement for oral disclosure for sales conducted by electronic media. This exception should be broadened to extend to telephone and direct mail sales. Since telephone sales are oral communications and provide no opportunity for written disclosure, we request that the written disclosure requirement be eliminated. Similarly, there is no opportunity for oral disclosure in the circumstances of direct mail solicitations and we request that the oral disclosure requirement also be removed. Compliance with such requirements would be overly burdensome to banks and impair their ability to compete effectively with non-bank insurance providers.

Effective Date

Although Section 305 of the GLB Act requires that the proposed regulations be issued by November 12, 2000, as presently drafted the Proposal contains no effective date. We request that implementation of the final rules be delayed until at least March 1, 2001 in order to allow time for affected depository institutions, their insurance product providers, and other affected parties to produce the required disclosures, train personnel, and implement policies and procedures to efficiently and effectively comply with the final regulation.

We appreciate the opportunity to present these comments. If you have need for any additional information or clarification of these comments, please do not hesitate to call me or Joe Mulkern at (617) 434-7712.

Yours truly,



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