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ASSOCIATION OF BANKS-IN-INSURANCE
1155 15TH STREET, N.W., SUITE 1101
WASHINGTON, D.C. 20005
(202) 833-7756

October 4, 2000

Via e-mail (FAX for FDIC)

regs.comments@occ.treas.gov
Communications Division
Office of the Comptroller
of the Currency
250 E Street, S.W.
Third Floor
Washington, D.C. 20219

Fax (202) 898-3838
Robert E. Feldman
Executive Secretary
Attn: Comments/OES
Federal Deposit Insurance Corp.
550 17th Street, N.W.
Washington, D.C. 20429

Attn: Docket No. 00-16

regs.comments@federalreserve.gov
Jennifer J. Johnson
Secretary, Board of Governors
of the Federal Reserve System
20th and C Streets, N.W.
Washington, D.C. 20551

Attn: Docket No. R-1079

public.info@ots.treas.gov
Manager, Dissemination Branch
Information Management & Services Div.
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attn: Docket No. 2000-68

Re: Proposed Rule – Consumer protections for the sale of insurance products and annuities by depository institutions[1]

Dear Sir or Madam:

The Association of Banks in Insurance[2] provides the following comments concerning the referenced proposed regulations (the "proposed regulations"). Except as discussed below, ABI supports the proposed regulations because they closely adhere to

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1 65 Fed. Reg. 50,882 (Aug. 21, 2000).

2 The mission of the Association of Banks in Insurance is to advance the legal and marketing capability of financial institutions to offer insurance services to their customers. The ABI is made up of banks, insurance companies, marketing firms, consultants, and other organizations active in supporting the process of offering insurance services to bank customers. ABI's 200 member organizations have assets totaling in excess of $3 trillion and employ over 30,000 licensed insurance agents.

the requirements set forth in Section 305 of the Gramm-Leach-Bliley Act[3] ("GLB Act"). Section 305 is very specific; consequently, we believe it requires very little amplification through regulatory interpretation.

Applicability of the Interagency Statement

There are several inconsistencies between the Interagency Statement on Retail Sales of Nondeposit Investment Products (Feb. 15, 1994) ("Interagency Statement") and the proposed regulations. We discuss two of the more important inconsistencies in this letter. Because the Interagency Statement provides "guidelines" that were not developed in a rulemaking, the final regulations should provide that conflicts between the Interagency Statement and the proposed regulations be resolved in favor of the proposed regulations.

One inconsistency concerns one of the disclosures related to annuity sales. In addition to mutual funds, the Interagency Statement applies to annuities, both fixed and variable. Among several other disclosures, the Interagency Statement requires depository institutions to disclose that nondeposit investment products, including *fixed* annuities, are subject to investment risk. The proposed regulations, however, only require the investment risk disclosure for an insurance product or an annuity that involves investment risk, that is, a *variable* annuity but not a *fixed* annuity. Not requiring the investment risk disclosure for fixed annuities makes sense, since fixed annuities, like most insurance products, have only credit risk, not investment risk. Moreover, fixed annuities are generally not considered securities. Accordingly, to the extent the Interagency Statement requires the investment risk disclosure for fixed annuities, the proposed regulations should provide that the Interagency Statement is not applicable and further clarify that fixed annuities do not have investment risk.

Another inconsistency concerns the use of disclosures in advertisements. The Interagency Statement requires that all of the disclosures be included in advertisements and promotional materials. The proposed regulations, on the other hand, provide that the disclosures are not required in "advertisements of a general nature describing or listing the services or products offered by the national bank."[4] We believe that because of the requirement in the proposed regulations that the disclosures be provided orally and in writing before the completion of the initial sale of an insurance product or annuity, there is no need to duplicate those disclosures in written advertising materials. Consequently, the proposed regulations should advise that the Interagency Guidelines do not apply with respect to that issue.

§__.20 Definitions

Consumer. The notice of proposed rulemaking asks whether the definition of "consumer" should be limited to individuals who purchase an insurance product or

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3 Pub. L. 106-102.

4 §__.40(c).

annuity that is used for personal, family or household purposes. The notice also asks whether the definition should be expanded to include all retail customers, including small businesses. We believe the definition should not be expanded on either count. One of the perceived problems the proposed regulations are designed to address is the lack of sophistication of individuals who are purchasing insurance products for personal, family or household purposes. Those purchasing the products for other purposes, as well as small businesses purchasing any insurance products, should be sufficiently knowledgeable so that there is no need to provide them with the customer protections provided in the proposed regulations.

Covered person. ABI agrees that the definition of "covered person" should not include a subsidiary of a depository institution[5] unless the subsidiary is selling insurance or annuities at the office of the depository institution or on the institution's behalf. The consumer protection provisions are tied closely to the direct or indirect involvement of a depository institution; it makes no sense to provide those protections when a depository institution is not involved.

With respect to whether an insurance product or annuity is being sold "on behalf of" a depository institution, Section __.10(e) lists several activities. Specifically, Section __.10(e)(2) provides that a person is acting on a depository institution's behalf if "[t]he depository institution receives commissions or fees, in whole or in part, derived from the sale of an insurance product or annuity as a result of *cross-marketing or referrals* by the institution or an affiliate." (emphasis added) Section __.10(e) should be revised so that the term "on behalf of" does not include the sale of an insurance product or annuity that results from a referral to an independent insurance agency by an employee of a depository institution or an affiliate. The proposed regulations permit an employee who accepts deposits at a depository institution to receive a nominal fee for a referral if the fee is not conditioned on the sale of an insurance product or annuity. If the only involvement by a depository institution is that one of its employees is receiving a nominal fee for simply referring someone to an agency that is not housed within the bank's premises, that alone should not be sufficient to require the insurance agency to comply with the regulations.

For example, assume an independent insurance agency is not situated on the premises of a depository institution, but it has arranged with the depository institution to pay a nominal fee to its employees simply for referring the depository institution's customers to the agency. The agency does not use the depository institution's name or logo, and the employee tells the customer only how to contact the agency and where it is located but does not endorse the agency or any of its products. In that case, there is no need for the agency to comply with the proposed regulations.

Additionally, the proposed regulations should make clear that the term "on behalf of" does not include a situation in which a depository institution and an independent insurance agency enter into a joint venture to conduct insurance sales, especially where

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[5] As used in this letter, the term "depository institution" shall mean a depository institution regulated by the relevant federal regulator for purposes of compliance with the proposed regulations.

they are joint owners of a third entity that is acting as the insurance agency and marketing the insurance products. In that situation, there is no reason for the proposed regulations to apply.

The notice of proposed rulemaking also asks whether the use of the name or corporate logo of the holding company or other affiliate in sales, solicitation or advertising documents should be considered to be an activity performed "on behalf of" a depository institution. We believe that if the name or logo of the holding company or affiliate is similar to the name or logo of the depository institution, the activity using that name or logo should be considered as being conducted "on behalf of" a depository institution. Because there could be some confusion in a customer's mind as to the involvement of the depository institution in those situations, the consumer protection regulations should apply.

Insurance. The final regulations should provide a definition of insurance that carves out from their coverage certain types of products offered by depository institutions that are directly related to banking functions, for example credit-related insurance,[6] because those products have historically been considered to be banking products as opposed to insurance products. To accomplish this, the term "insurance" should be defined to include products considered to be "insurance," as that term is defined in Section 302(c) of the GLB Act (15 U.S.C. § 6712(c)), except for: (1) products that are deemed to be "authorized products," as that term is defined in Section 302(b) of the GLB Act (15 U.S.C. § 6712(b)); (2) products having no cash value, such as long-term care insurance and disability insurance; and (3) products having no investment risk.

Office. The term "office," a definition important for determining whether an insurance product or annuity is being sold "on behalf of" a depository institution, is not clearly defined. Section __.20(h) defines "office" to mean "the *premises* of a national bank *where retail deposits are accepted from the public*." (emphasis added) That definition is ambiguous. It could be read to include either (1) only those *areas* of a depository institution's premises where retail deposits are accepted from the public (the intended definition), or (2) the *entire premises* of a depository institution that accepts retail deposits from the public. The definition should be revised to clarify that it includes only the area of a depository institution where deposits are accepted.

§__.40 What a covered person must disclose

The proposed regulations say that the required disclosures must be provided "orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer" and that the disclosures be acknowledged. The proposed regulations provide no exception to the disclosure and acknowledgement requirements for customers who have purchased an insurance product and have already received the disclosures. The proposed regulations should be revised to avoid unnecessary duplication

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[6] The term "credit insurance" refers to all types of credit-related insurance products, such as credit life, health, and disability products.

of disclosures and related acknowledgements where multiple insurance products are involved. One way to accomplish this would be to require the disclosures only when a customers first buys an insurance product from the financial institution. If the disclosure advises the customer that the disclosure applies to all of the insurance products and annuities offered by the financial institution, that should be adequate disclosure for the customer.

Additionally, it is infeasible for an oral disclosure to be made in a mass mailing solicitation, or for a written disclosure to be made as part of a telephone solicitation. The proposed regulations make an allowance in the case of solicitations over the internet by not requiring an oral disclosure. The proposed regulations should also make an allowance for the other types of solicitations that are not conducted face-to-face, where the nature of the media makes one of the forms of disclosure infeasible.

Finally, we believe that a compliance date should be selected that will afford financial institutions sufficient time to put in place procedures and develop written materials containing the required disclosures.

Sincerely,

[Signed in original]

E. Kenneth Reynolds
Executive Director