ABN·AMRO

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Via Facsimile

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

Ladies and Gentlemen:

Thank you for the opportunity to comment on your proposed rules implementing the insurance consumer protection provisions of the Gramm-Leach-Bliley Act (the "Act"). The following comments are made on behalf of LaSalle Bank National Association, Chicago, Illinois, Standard Federal Bank, Troy Michigan, European American Bank, Uniondale, New York and their parent financial holding companies in the ABN AMRO Group (collectively, "ABN AMRO").

ABN AMRO joins in and incorporates by reference each of the comments made by the Financial Institutions Insurance Association ("FIIA") in its letter to you of September 21, 2000, a copy of which is attached. ABN AMRO also has the following additional comments.

Application of the Interagency Statement

As the FIIA points out in its letter, the proposed regulations should not be made applicable to annuities, since bank-related sales of annuities are already covered under the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994 – the "Interagency Statement"). The Interagency Statement has proven to be more than adequate to address concerns arising from bank-related sales of these products. Moreover, although certain of the requirements of the proposed regulations differ only slightly from corresponding Interagency Statement requirements – notably, the form of disclosures – revising existing forms and procedures to address these differences would involve significant burdens upon banking organizations with little or no identifiable benefit to consumers. The Act does not require that the

proposed regulations cover annuities, and no compelling reason exists that they should.

In no event should annuities sales be covered by both the proposed regulations and the Interagency Statement.

Section ___.40 What a covered Person Must Disclose

1. Investment Risk Disclosure. To avoid confusion and over-regulation, clarification should be provided as to when the investment risk disclosure is required. Specifically, such clarification should state that the mere presence of credit risk of the insurer does not invoke the investment risk disclosure requirement. Credit risk is different from true investment risk -- i.e., the risk that market-driven factors will cause fluctuations in the value of the investment -- and is not the type of risk the Act's investment risk disclosure is intended to address. In fact, credit risk is precisely what the other disclosures required by the Act are intended to address.

2. Oral Disclosures. The proposed regulations appropriately provide that oral disclosures are not required in transactions conducted entirely through the use of electronic media; however, other types of transactions which do not involve face-to-face, telephonic or other oral contact between a covered person and a consumer are common in the industry. Examples include direct mail and other customer response programs, in which the solicitation is made via printed media (e.g., letters, print advertisements or brochures) and the consumer responds by mail or other indirect means. Oral disclosures should not be required in these transactions.

3. Readily Understandable Disclosures. The Act requires that the proposed regulations encourage the use of disclosures that are conspicuous, simple, direct and readily understandable. The Act provides examples of appropriately "abbreviated" versions of each of the required disclosures except those relating to conditions on extensions of

credit (the "anti-coercion disclosures"). The full-text anti-coercion disclosures contained in Section ___.40(b)(4) of the proposed regulations do not seem to meet the readily understandable requirement. The proposed regulations should include an example of an acceptable abbreviated disclosure, which we suggest should be "Not a Condition of a Loan."

4. Meaningful Electronic Disclosures. The proposed regulations provide that disclosures made through electronic media are not meaningfully provided if the consumer may *bypass the visual text of the disclosures before purchasing an insurance product.* This provision is ambiguous, and should be clarified to clearly permit the use of a "pop-up" disclosure screen or similar device which requires an affirmative response by the consumer before the consumer may advance further in the electronic sales process.

We appreciate the opportunity to comment on your proposed rules implementing the insurance consumer protection provisions of the Act.

Very truly yours,

Kirk P. Flores

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Enclosures
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## Comments from FIIA
### *by Kathleen W. Collins, Esq.*
### *Morgan, Lewis & Bockius, LLP – FIIA Washington Counsel*

identical comment letters sent to: Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System and Office of Thrift Supervision

September 21, 2000

VIA MESSENGER

Robert E. Feldman, Executive Secretary
Attention: Comments/OES
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429

Re: 12 CFR Part 343

Dear Mr. Feldman:

The Financial Institutions Insurance Association is a trade group which is comprised of some 290 banks, thrifts, credit unions, mortgage companies, insurance companies and third-party providers which are interested in advancing the rights of financial institutions to sell insurance and investment products. We appreciate the opportunity to comment upon your agency's proposed regulations.

General Comments

We note that the proposed regulations contain no effective date. Given the fact that final regulations may not be forthcoming until early November, that many states already have on their books laws and regulations which cover these same topics which will be in conflict with these new regulations, and that Section 305 of the Gramm-Leach-Bliley Act (the "GLB Act") sets forth various procedures for sorting out such conflicts, delaying the effective date of these regulations until at least November 2001 makes sense. Banks, already subject to state consumer protection laws and regulations applicable to insurance agencies and agents generally, as well as laws applying only to bank-affiliated agencies and agents, should not be put in the legal jeopardy of violating one set of laws due to efforts to comply with a second. Federal bank regulators should work cooperatively with state insurance

In determining which activities provoke the need for consumer protection, the ultimate receipt by the depository institution of a commission or fee as a result of cross-marketing or referrals should be inconsequential, as it constitutes an activity shielded from customer view. To cover the activities of a subsidiary agency or non-affiliated third party marketer because a bank may have referred a customer to such entity and received a fee for doing so is not a logical application of the regulations. When the subsidiary is also offering the bank's loans and/or deposits, particularly in a bundled transaction, the transaction is more logically "covered" by the regulation.

5. A bank acting only as a "finder" and placing customers in touch with insurers or agents should not be covered by these regulations as it is not selling, soliciting, advertising or offering an insurance product to a customer and is therefore outside of Section 305 of the GLB Act.

Section ____.40 What a Covered Person Must Disclose

1. To provide greater utility to those affected by these regulations, the regulations should clarify the circumstances under which an "initial purchase" disclosure continues to satisfy the disclosure requirements of section ____.40. For example, if disclosures given to a consumer purchasing a life insurance policy in 2001 continued to be accurate in 2002 when a new insurance product was offered to that customer, another set of disclosures and acknowledgments should not be required. The NAIC appears to be taking this approach in the Model Interim Privacy Regulation (Draft: 9/5/00) at Section 5.C(2).

2. The regulations should prescribe a record retention policy of two years for retaining consumer acknowledgments.

Section ____.50 Where Insurance Activities May Take Place

1. The "area where retail deposits are routinely accepted" should either be further referred to as the teller window area or should specifically exclude the platform area in banks, as many small branches have only these two areas in which employees may work.

2. The reference to referral fees should make it clear that this restriction on fees to tellers is not meant to exclude or restrict payment of fees to other persons.

We would be pleased to discuss any of these comments further with you. Thank you for considering our comments.

Very truly yours,

Kathleen W. Collins
Washington Counsel

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regulators and the National Association of Insurance Commissioners to identify those federal regulations which preempt state law in any given state. In the meanwhile, a plethora of existing laws and regulations are in place to guard against consumer abuses, abuses which have yet to be reliably documented.

Section ___.10 Purpose and Scope

1. Footnote 4 of the Section-by-Section Analysis 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." However, the Supreme Court in *NationsBank of North Carolina v. Variable Annuity Life Insurance Co.*, 115 S. Ct. 810 (1995) has already found that the Comptroller of the Currency reasonably concluded that annuities were not insurance since annuities are "functionally similar to other investments that banks typically sell." *Id.* at 817. Annuities have been regulated as nondeposit investment products at the federal level since February 15, 1994, when federal bank regulators issued the Interagency Statement on Retail Sales of Nondeposit Investment Products (the "Interagency Statement"). Similarly, the Securities and Exchange Commission on November 4, 1997, Release No. 34-39294 approved National Association of Securities Dealers, Inc. (NASD®) Rule 2350, which specifies requirements applicable to broker/dealers operating on the premises of financial institutions. The NASD took great pains in a lengthy comment procedure to conform this Rule to the Interagency Statement. The proposed regulations should not be made applicable to annuities.

2. "Consumer" should be defined to mean only real persons who obtain or apply for insurance products primarily for personal, family, or household purposes.

3. The term "solicit" should be defined to mean "to seek or obtain by persuasion, entreaty, or formal application," a dictionary definition (*The American Heritage Dictionary*, Second College Edition). When left undefined, the term has been frequently misinterpreted to forbid even the mention of an insurance product's availability, or the simple act of referral of a customer by an unlicensed employee to a licensed employee.

4. To avoid confusion and over-regulation, in lieu of a "covered person," the regulations should define a "covered transaction." The GLB Act gives bank regulators the flexibility to only extend the Section 305 protections to a subsidiary of a depository institution, where "such extension is determined to be necessary to ensure the consumer protections provided by this section." Only when subsidiaries are engaged in certain transactions which approximate the situations which supposedly hold the potential for abuse by a depository institution should subsidiary transactions be covered.

There are many instances where sales of insurance by a subsidiary should not be covered by the regulations, and where coverage may prove more confusing to a consumer than non-coverage. Rarely will an insurance subsidiary of a bank also make loans or offer deposits. Particularly when that subsidiary is selling insurance away from banking premises, requiring that subsidiary to raise the specter of coercive loan-tying or FDIC insurance coverage with the customer is more likely to cause the insurance customer to be concerned and confused than would complete silence on the topics. An employee working at the bank on certain days and at an off-premises agency on other days should also not be automatically "covered." The transaction rather than the person should be the focus of regulation. The use of a corporate logo or brand should have no bearing on the applicability of the regulations to a given transaction.