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October 5, 2000

Stuart Feldstein, Assistant Director
Office of the Comptroller of the Currency
Communications Division
250 E Street, SW., Third Floor
Washington, DC 20219
Attention: Docket No. 00-16

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

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

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

Ladies and Gentlemen:

Mellon Financial Corporation, Pittsburgh, Pennsylvania, appreciates the opportunity to comment on the proposed regulations issued by the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, on Consumer Protections for Depository Institution Sales of Insurance ("Insurance Sales Regulation" or "Regulation") pursuant to §305 of the Gramm-Leach-Bliley Act ("GLB").

We offer the following comments for your consideration.

§14.10 Purpose and Scope

The Interagency Statement on Retail Sales of Nondeposit Investment Products dated February 14, 1994 ("Interagency Statement" or "Statement") was issued by the same four regulators that are proposing the Insurance Sales Regulation. The Interagency Statement has been interpreted as applying to sales of insurance and annuities by depository institutions where the product being sold has an investment component. We feel that the Insurance Sales Regulation should state whether or not the Interagency Statement still applies to insurance and annuity sales by depository institutions[1]. If the Statement will continue to apply to insurance and annuity sales, the Regulation should give clear guidance as to how it and the Statement will fit together. There are some topics covered in the Statement that are not covered in the draft Regulation, such as the disclosures required in advertisements and brochures. In other cases, a topic is discussed in both the Statement and the Regulation, but the guidance is not exactly the same. One example is the discussion of where insurance and annuity sales may take place in an office of a depository institution. Presumably, the Regulation should govern where it gives guidance on a particular topic, and the Statement should govern (as to products covered by it) where the Regulation is silent.

§14.20 Definitions

(c) Consumer - Comment is solicited on whether this definition should include all retail customers, including small businesses; or, alternatively, whether the definition should be limited to individuals who seek insurance for consumer purposes. We believe that small businesses should not be included in the definition and that the definition should be limited to consumer purpose transactions. First, we believe that including small businesses and non-consumer purpose sales would go beyond Congress's intent in enacting GLB. Section 305 of GLB has several references to "consumer". While the term is undefined, the common meaning of the term in other federal consumer protection statutes and regulations is generally limited to personal, family or household purposes. We believe that it is significant that Congress used the term "*consumer protection regulations*" in the subsection that charges federal regulators with the responsibility to adopt insurance sales regulations[2]. In addition, small business customers are generally more sophisticated than consumers and there is little evidence of abuses involving them. We propose that the definition be changed to read: "Consumer means an individual who obtains, applies to obtain, or is solicited to obtain insurance products or annuities from a covered person for personal, family or household purposes."

(e) Covered Person - First, we suggest that "covered person" may not be the right term or concept to use in the regulation, at least with respect to licensed insurance

[1] The Interagency Statement also covers the sale of other nondepository products such as mutual funds and other securities which will not be subject to the Insurance Sales Regulation.
[2] §47(a)(1) of the Federal Deposit Insurance Act, as added by §305 of GLB.

agencies and other insurance providers affiliated with a national bank. This term and the rest of the proposed Regulation seems to assume that if a person falls under one of the four factors under the definition, all of his, her or its activity is covered. This is probably the right rule in cases where a national bank itself is conducting the insurance sales activity. However, for insurance sales activity by other persons or entities, it is not a sensible rule. For those, the definition should focus on the particular sales activity of the person or entity, and not on the person or entity as a whole. For example, many insurance agencies affiliated with national banks are not the traditional "captive" agency whose only purpose is to sell insurance products to depository customers. For some of these agencies, business obtained by referrals from the national bank constitute only a small part of the agency's book of business[3]. However, as the Regulation is currently drafted, if the agency conducts *any* sales activity involving referral fee payments to the bank or its employees, it appears that the agency is a covered person for *all* of its sales activities, even those that have nothing to do with referrals or cross marketing with the bank. Another example is an independent insurance agent who, as a small part of his or her sales activity and book of business, has a referral relationship with a national bank. As currently drafted, the independent agent is apparently a covered person for *all* of his or her insurance sale activity. We would have no objection if all persons or entities that conduct any bank-related sales activity are subject to the restrictions on prohibited practices in §14.30 with respect to all of their sales activity, whether bank-related or not. But we do not believe the *disclosure* requirements of §14.40 should apply to sales activities of persons or entities which have nothing to do with a depository institution. As we believe the two examples demonstrate, such a rule would be impractical and beyond the intent of Congress in enacting GLB. Also, such disclosures may be confusing to customers if made in cases where no depository institution was involved in the sales process.

We suggest two alternate ways of changing the proposed Regulation. One is to change the term "covered person" to "covered transaction" or "covered sales activity", and to make it clear that the disclosure requirements do not apply to sales activity unrelated to a depository institution. Another is to leave the definition essentially as is, but to state in §14.40 that the disclosure requirements only apply to sales or solicitation activities involving a depository institution or its employees, and not to sales activity independent of a depository institution.

We also suggest the following changes and clarifications to the definition of "covered person". The first factor should be clarified by providing that representing to a consumer that insurance is offered by an insurance agency that is a corporate affiliate of a bank does not by itself trigger that factor. The third factor says an insurance provider is a covered person if the sales, solicitation or advertising materials refer to the bank or use its logo or corporate name. We believe this is too restrictive, especially in cases where the name or logo of the bank is similar to that used by the holding company. We believe the point ought to be whether the insurance and annuity sales activity might reasonably be misconstrued to be on behalf of a depository institution. Using the name or logo of a

[3] Mellon's Clair Odell agency is a prime example of this.

holding company would not normally be enough to cause such a misunderstanding, even if the logo or name is a portion of the name of an affiliated depository institution. For example, an entity called "Mega Insurance Services" should not solely by virtue of its name be considered a covered party. But, if the entity were called "Mega Bank Insurance Services", the name could cause confusion as to whether the entity was selling depository accounts, and probably should be considered a covered party by virtue of its name alone.

(g) Electronic Media - Comment is solicited as to whether the fairly open-ended definition of "electronic media" is consistent with GLB's requirement that disclosures should be both written and oral. We believe the definition should remain as is, so as to allow for technological innovation. Comment is also solicited as to whether the proposed rules for electronic and telephone disclosures are flexible enough to allow for technological innovation, or alternatively, whether detailed guidance should be provided concerning online advertising such as was recently issued by the FTC. We believe that such guidance would be duplicative in light of the FTC rules, and might frustrate innovation.

§14.40 Disclosures

Subsection (b)(5) requires the consumer to acknowledge receipt of the disclosures, either in writing or electronically. Occasionally customers receive the disclosures but refuse to sign the acknowledgment. The regulations should state what is to be done in such cases. We suggest that in such cases a licensed agent must state in writing that he or she asked the customer to sign the acknowledgment, the reasons that the acknowledgment was not signed by the customer and the agent should sign the written statement.

Comment is requested as to whether specific methods should be required to call attention to the disclosures, such as plain language headings, minimum type size and font requirements, wide margins and ample spacing. We believe that such requirements would be burdensome and unnecessary unless widespread abuse can be shown.

§14.50 Where Insurance Activities May Take Place

There are some minor differences between the guidance given in the Interagency Statement and that in the proposed Regulation. The Statement refers to the teller window as an example of an area where retail deposits are routinely taken. This is a useful example and should be retained in the Regulation. The Statement provides for the situation where physical considerations prevent sales of nondeposit products from being conducted in an area distinct from the deposit taking area. This guidance should be retained in the Regulation.

We suggest that you provide guidance for the situation where the person engaged in deposit taking activity is also licensed to sell insurance products. This scenario is

increasingly likely to happen because increasing numbers of employees of financial institutions are licensed to sell alternative investment and insurance products and some of these occasionally serve in deposit taking positions. The regulation should discuss how these employees should conduct themselves when their activities cross over from deposit taking to insurance and annuity sales. We suggest that the Regulation provide the following guidance. When a licensed employee is engaged in deposit taking activity, the employee may either refer customers interested in insurance or annuity products to a qualified person with the referral subject to the limitations on referral payments, or conduct the sale himself or herself. However, before beginning any sales activity, the licensed employee must: (1) go with the prospect to an area where retail deposits are not routinely accepted; (2) give the prospect the oral and written disclosures described in § 14.40 and (3) request the prospect's written acknowledgment.

If you would like to discuss any of the comments in this letter, please feel free to call the undersigned at 412-234-1537; Leonard R. Heinz, Assistant General Counsel, at 412-234-1508; or James H. Foster, Associate Counsel, at 717-780-3094.

Yours sincerely,

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