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October 5, 2000

Via Personal Delivery and Electronic Mail

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

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

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

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:

The Securities Industry Association ("SIA")[1] welcomes the opportunity to comment on the proposed insurance consumer protection rules issued pursuant to the Gramm-Leach-Bliley Act ("GLB") by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (collectively, "the Agencies"). The Agencies are required by Section 305 of GLB (which added section 47 to the Federal Deposit Insurance Act) to issue regulations which they "jointly determine to be appropriate" regarding the sale of insurance products. The GLB Act directs that the regulations apply to retail sales practices, solicitations, advertising, or offers of insurance

[1] The Securities Industry Association brings together the shared interests of more than 740 securities firms throughout North America to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of more than 50-million investors directly and tens of millions of investors indirectly through corporate, thrift and pension plans. The industry generates more than $300 billion of revenues yearly in the U.S. economy and employs more than 600,000 individuals. (More information about SIA is available at our Internet web site, http://www.sia.com.)

products by depository institutions or persons engaged in such activities on behalf of, or at an office of, a depository institution.

The proposed rules are of concern to SIA because many of our members engage in the sale of certain insurance products and annuities on the premises of depository institutions, some of which are affiliated entities. Accordingly, SIA wishes to address certain issues raised by the proposal and to respond to certain questions raised by the Agencies.

Among SIA's primary recommendations are that: 1) the scope of a "covered person" be limited to only those activities that are connected to a depository institution; 2) the use of the corporate logo of a depository institution in connection with the sale of insurance products or annuities not be considered to be a covered activity; 3) the use of the name or logo of the holding company or an affiliate of a depository institution in connection with the sale of insurance products not be a covered activity; 4.) the definition of "consumer" only include individuals who obtain insurance products or annuities for "personal, family or household purposes," consistent with other GLB rules; and 5.) the rule provide no further guidance on providing "readily understandable" notice.

Our comments are addressed to each of the Agencies' rules and, accordingly, our citations are to sections only.

Definitions (§__.20)

We have comments about several of the rule's definitions:

(c) Consumer – We suggest that the definition of "consumer" be limited to individuals who obtain insurance products or annuities primarily for "personal, family or household purposes." Such a definition would be consistent with the definition as used in the GLB privacy rules issued by the Agencies and other consumer banking regulations. Moreover, the definition in this way would exclude small businesses, which do not require the same level of protection and should not be included under the rule's coverage.

(e) Covered person – The definition of "covered person" or "you" could be interpreted too broadly and should be revised to clarify what is meant by "on behalf of" a depository institution. As proposed, a person could be considered to be engaged in an activity considered to be "on behalf of" a depository institution by an activity that is unconnected to a depository institution. For example, under the proposed standard, insurance product or annuity sales activity by a broker-dealer affiliated with a bank would be covered by the rule where the broker-dealer and bank use the same corporate logo. Thus, a registered representative operating out of a broker-dealer office separate from an affiliated bank could be held to have acted "on behalf of" a bank where documents evidencing the sale of an annuity use the same corporate logo as the affiliated bank. Accordingly, the proposed definition could lead to the unintended result, not contemplated by GLB, that sales activity that have no connection to a depository institution would be covered. The rule and its disclosure requirements should not apply

when there is no connection between the broker-dealer selling insurance products or annuities and the depository institution. When there is no such connection, customer confusion is not a cause for concern.

We believe these inconsistencies would be eliminated if the rule adopted the same approach as the Interagency Statement on Retail Sales of Nondeposit Investment Products, which applies to covered activities, as opposed to covered persons. Consistency with the Interagency Statement is also important because products that are both securities and insurance will be subject to this rule and the Interagency Statement. If different approaches are adopted, products that are both securities and insurance will be subject to two different sets of standards. This would lead to undue burden for the industry and confusion for consumers.

Another reason that the rule's focus should be on covered activities is to make clear that some persons will be covered for only some, but not all, of their insurance and annuity sales activity. The proposed rule appears to make a person a "covered person" for all of their insurance sales activity, irrespective of whether all of their insurance activities come under the rule. However, some of our members are involved in the sale of certain insurance products and annuities both on the premises of depository institutions and at offices separate from and without any connection to a depository institution. While the broker-dealer's activity on the premises of a bank would be covered, sales activity that is unconnected to the bank and takes place at an office of the broker-dealer should not be covered. Thus, the rule should allow for a person to be a covered person for some activities, but not for all activities.

The third and fourth factors under the definition of "covered person" or "you" should be revised to clarify that an affiliate is not a covered person simply because it uses the same corporate logo as the bank on documents related to the sale of insurance products or annuities or uses the corporate logo for such activities at an off premises site. Because of the rapid convergence in the financial services industry, it is now common for separate affiliates that are part of diversified companies to use the same corporate logo. If the rule is not clarified, sales activity at premises separate from a bank will be covered simply because a broker-dealer uses the same corporate logo as its affiliated bank. Clearly, there is no justification to cover under this rule sales activity that is being conducted at offices of a broker-dealer where the name of the bank is not used in the offer or sale of the insurance product. In this situation, there is no likelihood that a customer will be confused, and thus no need for the required disclosure.

On a related issue, the Agencies have requested comment on whether the use of the name or corporate logo of a holding company or other affiliate in documents evidencing the sale, solicitation, advertising, or offer of an insurance product or annuity should be considered on behalf of the institution and thus a covered activity; and whether the sale, solicitation or other such activity of such products at an off-site premises that identifies or refers to the holding company or other affiliate, or uses such entities name or corporate logo be a covered activity. We feel strongly that such activities alone should not be considered to be "on behalf of" a depository institution. The primary concern

should be whether customers could reasonably believe these activities to be conducted by the depository institution. Clearly, using the name or logo of a holding company or affiliate would not normally be enough to cause such confusion, even if the name is similar to the name of an affiliated depository institution. In short, a broker-dealer affiliated with a bank that conducts sales activity of insurance products or annuities under the name of the brokerage firm should not be a covered party solely by virtue of its name – even if similar to the bank. Of course, the affiliated broker-dealer could come within the rule's coverage if it performed an activity on behalf of such institution as defined in the proposed rule, e.g., selling on the premises of a bank or representing that the sale was on behalf of the bank.

We also believe that the second factor for "on behalf of" should be amended to clarify that the terms "cross-marketing" or "referrals" do not cover the sharing of a customer list from a bank to an affiliate engaged in insurance activities. Such activity, if done, does not raise issues regarding customer confusion and should not be included in the rule's coverage.

(g) Electronic media – We think the definition as proposed is sufficient and will allow for flexibility to accommodate changes in technology and electronic communication.

(h) Office – The proposed definition is too broad and could be read to apply beyond what was intended by the GLB. Thus, under the proposed definition, a broker-dealer office that accepts and places funds into a brokerage account that is linked to a demand deposit and sweep account could be considered to be "the premises of an institution where retail deposits are accepted." Because this could not be the desired result we suggest that the definition of "office" be revised to state, the "premises of a depository institution where retail deposits are routinely accepted."

- **Prohibited Practices (§__.30)**

(c) Prohibition on domestic violence discrimination – This provision could be interpreted too broadly and should be clarified to ensure that the prohibition on domestic violence discrimination does not apply to the sale, solicitation, advertising or offer of annuities. This limitation should be clear because the prohibition on domestic violence discrimination is only applicable to underwriting related issues and is not a concern in the sale of annuities.

What a covered person must disclose (§__.40)

The Agencies should simplify the disclosure requirements by eliminating the disclosure that the product is not a deposit or other obligation of the depository institution. This disclosure is not required by section 305 of the GLB and given the other required elements of the disclosure, does not add meaningful information. This should be the case for both the long and short form of the disclosures. The industry's experience with Interagency Statement has been that short and simple disclosure works best for

consumers. In addition, the "tying" disclosure is too long and confusing and will likely lead to more consumer confusion. Accordingly, we urge the Agencies to adopt a shortened and simplified tying disclosure.

The proposal requests comment on whether the rule should provide specific methods of calling attention to the material contained in the disclosures, such as requiring plain language headings, wide margins and ample line spacing. Although the SIA appreciates the importance of providing notice that is "readily understandable," we respectively submit that the Agencies need not further define this standard for purposes of this regulation. We think further requirements would be unnecessary and burdensome. The rule as proposed requires that disclosure be "conspicuous, simple, direct, readily understandable and designed to call attention to the nature and significance of the information provided." These directives are clear and specific and allow flexibility for firms to fashion appropriate disclosures. Requiring specific methods would not add to clarify the requirement, but instead would appear to establish rigid requirements that take away from such flexibility.

In addition, the rule's requirement that a covered person "must" obtain a written acknowledgment that the consumer has received the required disclosures is problematic. Financial institutions can send out written acknowledgment forms, but they have no control over whether these forms are returned by consumers. Thus, under the rule as proposed, a financial institution could be held to be in violation of the rule where a consumer has failed to return its written acknowledgment through no fault of the institution. Oral acknowledgment should be sufficient because section 305 of GLB does not require that acknowledgments be in writing. Clearly, written acknowledgments should not be required for telephone sales. For oral acknowledgments, covered persons could be required to maintain records documenting the acknowledgment. If written acknowledgement is required for some activity, it should be limited to a requirement that the seller send a written form acknowledgment to the consumer.

The Agencies have sought comment on whether the rules as applied to electronic disclosures are flexible enough to permit future innovation. We urge the Agencies to avoid issuing technical rules as to how disclosures are made through electronic media. Financial Institutions need flexibility to adopt electronic delivery of disclosures to advances in technology and the needs of customers.

Where insurance activities may take place (§__.50)

(b) Referrals – As drafted, the provision would allow for a referral **only** to a customer "who seeks to purchase an insurance product or annuity." Thus, a referral would not be permitted if the customer did not mention the insurance product. We suggest that the provision be revised to allow for a referral where the customer does not expressly mention an insurance product or annuity but expresses a need for such.

We hope these comments have been helpful. If you have any questions, please contact the undersigned at (202) 296-9410.

Sincerely,

Alan E. Sorcher
Assistant Vice President and
Assistant General Counsel