American Express Financial Advisors Inc.
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Financial Advisors

October 5, 2000

Office of the Comptroller of the Currency
Communications Division
250 E. Street, SW
Third Floor
Washington, D.C., 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

2000 OCT -6 A 8:16

Subject: Proposed Federal Rulemaking on Bank Sales of Insurance

Dear Sirs and Madams:

American Express Financial Advisors, Inc. ("AEFA") is pleased to take this opportunity to provide comments to the Office of the Comptroller of the Currency ("OCC"), Federal Reserve System ("FRB"), Federal Deposit Insurance Corporation ("FDIC") and Office of Thrift Supervision ("OTS") regarding their proposed joint rules on insurance sales by depository institutions ("Proposed Rules") published under Section 305 of the Graham-Leach-Bliley Act ("Act").

AEFA submits these comments on behalf of itself and its affiliated insurers, broker-dealers, investment advisers and its investment company.[1] AEFA is a wholly owned subsidiary of American Express Financial Corporation, which is wholly owned by American Express Company ("American Express"). American Express has been a leader in consumer privacy protection and has been a strong proponent of providing consumers with clear and accurate disclosures on information use and marketing practices. Toward that end, AEFA offers the following comments and suggestions concerning the Proposed Rules for your consideration.

General Comments

We believe that the Proposed Rules largely reflect the intent behind the Act. However, there are certain provisions of the Proposed Rules which are ambiguous in their present form or exceed the scope of the Act. We agree that there is a need for consumers to be informed of the differences between FDIC-insured deposit products and insurance and annuity products which have no FDIC insurance. We also agree that insurance and annuity product sales activities should be clearly distinguished from retail deposit-taking activities, whether these activities are conducted on the premises of a financial institution or through other methods. Where a depository institution requires insurance in conjunction with a loan or a credit offering, it would be appropriate to require disclosure to ensure that the consumer understands that a loan or credit offering cannot be conditioned on the purchase of insurance from a depository institution or its affiliates.

These principle are currently in place in various federal and state laws, rules and regulations whose purpose is to enhance consumer understanding of the features of insurance and annuity products as compared to deposit products. We would urge that the proposed rules, however extend beyond these principles through inclusion of ambiguous terms such as the "on behalf" of language found in __.20(e). The focus of the Proposed Rules should be on imposing additional

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[1] **IDS Investment Company**
IDS Certificate Company

Investment Advisor Companies
AEB Global Asset Management – AEBGAM, American Express Asset Management Group Inc. – AEAMG, American Express Asset Management International – AEAMI, American Express Financial Advisors Inc. – AEFA, American Express Financial Advisors Japan Inc. – AEFAJ, American Express Financial Corporation – AEFC, American Express Service Corporation – AESC, IDS Life Insurance Company – IDSL, Kenwood Capital Management LLC – KCM

Broker-dealer Companies
American Enterprise Investment Services, Inc. – AEIS, American Express Financial Advisors Inc. – AEFA, American Express Service Corporation – AESC

Insurers
– IDS Life Insurance Company - American Enterprise Life Insurance Company, American Partners Life Insurance Company, – IDS Life Insurance Company of New York, American Centurion Life Assurance Company .

requirements only for those activities most likely to cause confusion between the insured feature of deposit products and insurance and annuity products. Where existing federal and state law, rules and regulations already address the concerns of Act, the Proposed Rules should either allow the existing law, rules and regulations to suffice or should be modified in order to be consistent. Examples of the type of activities that could trigger a requirement that consumers be informed of the differences between deposit products and insurance and annuity products include:

- sales of both deposit products and insurance and annuity products occur on the premises of a depository institution;
- a depository institution or one of its employees is the seller of both deposit products and insurance and annuity products;
- a depository institution engages in retail sales practices, solicitations, advertising and offers of insurance and annuity products;
- a depository institution introduces insurance and annuity products sold by an insurance company, whether affiliated or unaffiliated.

Following are our comments on how specific sections of the Proposed Rules could be clarified and more narrowly tailored to better achieve the Act's purpose.

Section-by-Section Comments

§__.20 Definitions

We have several comments regarding the definitions found in the Proposed Rules:

Consumer—We agree with the comments of the Securities Industry Association ("SIA") and American Council of Life Insurers ("ACLI") that the definition of consumer should be limited to individual obtaining insurance products or annuities for personal, family or household purposes and should not include small businesses. We believe that the Act's purpose is to address the sale of insurance to consumers for personal use and not for business use. As such, the scope of the Proposed Rules is inconsistent with and would exceed that of the Act.

Covered Person or You—The definition of "covered person" or "you" is ambiguous and overbroad. Much of the ambiguity rests in the phrase "on behalf of." This ambiguity and overbreadth could be eliminated by applying the Proposed Rules to "covered activities" rather than "covered persons." Once a person is deemed to be a covered person, all selling, soliciting, advertising or offering activities of that person which concern insurance products or annuities would be subject to the Proposed Rules. This overbroad coverage of the Proposed Rules may only serve to add confusion in the minds of consumers and cause significant additional costs for these covered persons. Use of "covered activities" in lieu of "covered persons" would more clearly reflect the purpose of the Act, reduce consumer confusion, and reflect the approach taken by various state and federal rules as described above. For example, the disclosures that are required pursuant to NASD R. 2350 focuses on services offered rather than those persons conducting the services. By adjusting this coverage, the Proposed Rules would be more consistent with existing federal and state laws, rules and regulations.

The "on behalf of" language § __.20(c)(1) is particularly problematic. In attempting to define what activity is "on behalf of" an institution, the Proposed Rules state that "[t]he person represents to a consumer that the sale, solicitation, advertisement, or offer of any insurance product or annuity is by or on behalf of the institution." This further reference to "on behalf of" creates ambiguity and does not provide sufficient guidance for depository institutions. As such it should be eliminated and replaced with an examination of whether a "covered activity" such as those set forth above exists and requires a consumer to be informed of the differences in deposit products and insurance and annuity products.

The reference to "cross marketing" by depository institutions and affiliates in § __.20(e)(2) is ambiguous, unnecessary and could result in consumer confusion. Because "cross marketing" is not defined, the Proposed Rules could be interpreted to cover all types of marketing involving both a depository institution and its affiliates. Only in certain circumstances should cross-marketing be subject to the Proposed Rules. The following is an example of when the Proposed Rules may apply:

- an institution or its affiliate is marketing to an institution's customer solely because of the customer's relationship with the depository institution.

Where the marketing activity is not clearly related to depository institution, a consumer may become more confused with the unnecessary and additional disclosure. In addition, covering cross-marketing by an affiliate where there is no connection to the institution is unduly burdensome on the affiliate with no commensurate benefit to the consumer. We believe that the ACLI comment further explains our concerns accurately.

The use of common logos or names alone should not trigger the coverage of the Proposed Rules. There are also other existing federal and state laws, rules and regulations which address the use of logos and names. The NASD, SEC and state insurance laws already provide sufficient protection for consumers.

A similar standard as set forth in NASD R. 2210(f), describing the standards applicable to the use and disclosure of a member's name, could be a useful alternative to the Proposed Rules with regard to common logos and shared names. The NASD rule, followed by the NASD and the SEC, applies where a broker-dealer and its affiliates share a logo or name and advertise multiple products. The rule requires the following disclosures:

> (B) If a non-member entity is named in a communication in addition to the member, the relationship, or lack of relationship, between the member and the entity shall be clear.
> (C) If a non-member entity is named in a communication in addition to the member and products or services are identified, no confusion shall be created as to which entity is offering which products and services. Securities products and services shall be clearly identified as being offered by the member.
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> (H) Any reference to membership (e.g., NASD, SIPC, etc.) shall be clearly identified as belonging to the entity that is the actual member of the organization.

NASD R. 2210 (2000).

Under this NASD rule, use of a common logo or even a common abbreviated name is permitted as long as it is clearly disclosed which firm is the broker-dealer. This type of rule would more clearly reflect the purpose of the Act, which was to enable affiliation and diversification without requiring different regulatory requirements for depository-institution and affiliated insurance and securities providers than for other independent insurance and securities providers.

As § __.20(e)(4) of the Proposed Rules is currently drafted, the mere use of a common logo or name could trigger coverage of the Proposed Rules. We think that such an interpretation is unintended and urge the removal of the logo provision. In today's financial services industry, there are many companies that share a common element of a name or logo. In many cases, these logos and names are not recognized or confused by consumers as being a depository institution. As such, these names and logos do not cause consumers confusion that activities relating to insurance and annuity products are deposit products. The Proposed Rules' coverage of the identification or reference to a common logo is overbroad, unnecessary and exceeds the intent of the Act.

Some circumstances where a logo or name may trigger the coverage of the Act include:

- an insurer engaged in retail sales practices, solicitations, advertising and offers of insurance and annuity products has a logo that connotes a depository institution;
- an insurer engaged in retail sales practices, solicitations, advertising and offers of insurance and annuity products has a name which includes a term traditionally associated with a depository institution, such as "bank," "savings and loan" or "credit union;"

One of the principal purposes of the Act was to allow for the diversification of the financial services industry. The proposed rules in their current form could deter this diversification. There is no reason to penalize those companies that have strong brand identification.

We also adopt ACLI's comments with regard to the use of the word "corporate" in describing logos and names. We further adopt the comments of both ACLI and SIA regarding the use of names or logos of holding companies and affiliates and their remaining comments with regard to logos and names.

§ __.40 What a covered person must disclose

As currently drafted, the Proposed Rules apply to all insurance activities. We think that this application is to broad-sweeping and exceeds the scope of the Act. If a person is deemed a "covered person," all activities of that person would be subject to the Proposed Rules. This would be the case even where no activities exist that would trigger a requirement that consumers be informed of the differences in deposit products and annuity and insurance products. Again,

adjusting the definition of a "covered person" to "covered activity" would provide better guidance.

The required disclosure pursuant to § __.40(4) relating to conditioning an extension of credit should only be required where an employee of a depository institution is offering both deposit products and insurance and annuity products. Additional disclosure beyond this would appear to be unnecessary and could result in creating consumer confusion where none exists.

We agree with the ACLI regarding oral disclosures for the sale of insurance or annuity products completely though written correspondence and incorporate their comments herein. We similarly agree with the ACLI, in addition to the comments by SAI, on the need for flexibility in other environments, such as telephone solicitations. A covered person cannot be held responsible for a consumer's failure to return a written acknowledgement. Further, the Act does not require that any disclosure be written. If a written acknowledgement is required, we would recommend that the acknowledgement be patterned after NASD R. 2350(c)(3)(B), which requires that only reasonable efforts are required to obtain an acknowledgement.

We believe that the Proposed Rules should allow more flexibility as to the use of the disclosures required in § __.40(b)(1) and the short-form method of disclosure in § __.40(b)(3) and (4). As is the case with NASD R. 2350, the Proposed Rules should indicate under what circumstances that the short-form disclosures would be readily understandable. In addition, covered persons should be allowed to modify the exact language of the disclosure provided that the disclosure conveys the same meaning. For example, "may lose value" should be allowed in lieu of "may go down in value."

§ __.50 Where insurance practices may take place

We would suggest that the Proposed Rules follow existing federal and state laws, rules and regulations on the subject. NASD R. 2350, for example, states that the physical location must be "distinct." The Proposed Rules currently state that the location must be "physically segregated." The Model Depository Institution Sales Insurance Act adopts similar verbiage to the NASD rule.

We appreciate the opportunity to offer comments to the Proposed Rules. Should you have nay question, please do not hesitate to call Vicki Lubben at (612) 671-3797.

Sincerely,

Vicki M. Lubben
Vice President and Group Counsel

Paul R. Johnston
Vice President Insurance Affairs