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Representing Illinois' Real Community Banks

October 5, 2000

Manager, Dissemination Branch
Information Management and Services Division
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attention: Docket No. 2000-68

Dear Madam or Sir:

On behalf of the Community Bankers Association of Illinois ("CBAI"), I am submitting this comment letter in response to the federal regulatory agencies' joint notice of proposed rulemaking on the subject of consumer protections for depository institutions' sales of insurance ("the proposed rule"). CBAI is a professional, not-for-profit trade association representing the interests of more than 530 financial institutions. CBAI's members, which include commercial banks, savings and loan associations and savings banks, can be found in each of Illinois' 102 counties and may be chartered by either the federal government or by the State of Illinois.

CBAI provides numerous services for the benefit of its membership, but its primary mission is acting as an advocate for the interests of community banking in Illinois. To this end, CBAI monitors legislative, regulatory and legal events, both at the State and federal levels, that may impact the interests of CBAI's members. The proposed rule raises the following issues of concern to CBAI and its members, and we appreciate your consideration of these comments.

Section 536.20—Definition of "You"

The definition of "You" includes, in addition to the financial institution, "any other person selling, soliciting, advertising, or offering insurance products or annuities to a consumer" at an office of the financial institution "or on behalf of" the financial institution. The definition provides that a person acts "on behalf of" the financial institution if that person sells, solicits, advertises or offers insurance products or annuities and: (1) the person represents that the action or transaction is by or on behalf of the financial institution; (2) the financial institution receives a commission or fee derived from the sale of the insurance product or annuity as a result of cross-marketing or referrals by the financial institution or its affiliate; (3) documents evidencing the sale, solicitation, advertising or offer of the insurance product or annuity identify or refer to the bank or use its corporate logo or name; or (4) the sale, solicitation, advertising or offer takes

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place at an off-premises site that identifies or refers to the financial institution or uses its corporate logo or name.

CBAI is familiar with advertising by at least one financial institution that is owned by an Illinois-based insurance company. The advertising in question includes the "Member FDIC" display, but also prominently includes the display of the parent insurance company's corporate logo. That logo includes the insurance company's name and the words "Auto," "Life," and "Fire," which are references to insurance coverages available from the parent insurance company.

Under the proposed rule, it is apparent that if the insurance salesperson uses the financial institution's corporate name or logo, the salesperson could be deemed to be acting "on behalf of" the financial institution and would thus be subject to the prohibitions and requirements of the proposed rule. It is not clear, however, that the converse would hold true. The risk of confusion, misunderstanding or deception experienced by a consumer is no less of an issue when the financial institution, while advertising a banking product or service and its FDIC insurance, cross-markets its affiliated insurance products by prominently displaying the parent insurance company's logo. CBAI encourages the federal regulators to consider a definition of "You" or "covered person" (or the explanation of "on behalf of" contained within the definition of "You" or "covered person") that will address this loophole. Otherwise, community banks that are not subsidiaries of or affiliated with insurance companies may be at a competitive disadvantage with respect to the ability of financial institutions owned by or affiliated with insurance companies to cross-market banking and insurance products without complying with the consumer protections of the proposed rule.

Section 536.30—Practices that "would lead a consumer to believe..." or "could mislead any person..." regarding coercion, tying, etc.

Section 536.30(a) prohibits practices that "would lead a consumer to believe that an extension of credit, in violation of Section 106(b) of the Bank Holding Company Act Amendments of 1970, is conditional upon" the tying of the credit to the purchase of insurance from the financial institution or its affiliates or the coercion of the consumer to refrain from purchasing insurance from an unaffiliated entity. Section 536.30(b) prohibits practices or advertisements that "could mislead any person" to the erroneous conclusion regarding whether the insurance product is federally-guaranteed or insured, whether the insurance product involves investment risk, etc.

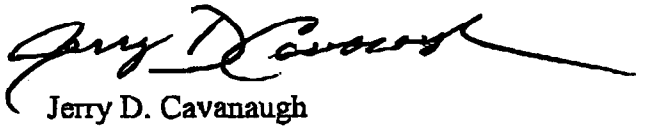
CBAI encourages the federal regulatory agencies to amend or clarify the language quoted in the preceding paragraph in order to establish a standard of reasonableness or, conversely, a good faith defense of the financial institution against an unreasonable belief or understanding by the consumer. Otherwise, a consumer could allege that (s)he was led to a belief or to an

understanding that led to some detrimental result, notwithstanding the fact that the solicitation or advertisement, when viewed objectively, should not have led a reasonable person to that same belief or understanding.

CBAI notes that the relevant "anti-tying" language in Section 106(b) of the Bank Holding Company Act amendments of 1970 (12 USC 1972) states that financial institutions "shall not...extend credit...or furnish any service...*on the condition or requirement*" (emphasis added) that the customer conduct additional specified business transactions. Illinois' Financial Institutions Insurance Sales Law (215 ILCS 5/1400 et seq.) prohibits Illinois financial institutions from offering banking products "on a condition or requirement" that the customer obtain insurance from the financial institution or its affiliate. We note the language of Section 106(b) of the Bank Holding Company Act Amendments of 1970 and of the Illinois statute because such language more objectively places a prohibition on the financial institution, as opposed to potential issues resulting from the subjective judgment, understanding or belief of any particular consumer.

Thank you for your attention to and consideration of these comments. If you have any questions or seek additional information, please feel free to contact me.

Sincerely,



Jerry D. Cavanaugh
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Community Bankers Association of Illinois

cc: Roger Lehmann
Mark Field
Bob Wingert
David Manning