



October 5, 2000

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

Communications Division  
Office of the Comptroller  
of the Currency  
250 E Street, SW  
Third Floor  
Washington, DC 20219  
Attention: Docket # 00-16

Jennifer J. Johnson  
Secretary  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> and C Streets, NW  
Washington, DC 20551  
Docket # R-1079

Manager, Dissemination Branch  
Information Management &  
Services Division  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
Attention: Docket # 2000-68

**Re: Consumer Protections for Depository Institution Sales of Insurance;  
Proposed Rule (65 FR 50881)**

Dear Sirs or Mesdames:

The Conference of State Bank Supervisors (CSBS) is pleased to have the opportunity to comment on the proposed insurance consumer protection rules issued by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (collectively, the "Agencies").<sup>1</sup> CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation's 6,868 state-chartered commercial and savings banks and 419 state-licensed branches and agencies of foreign banks.

<sup>1</sup> 65 Fed. Reg. 50881, (Aug. 21, 2000).

## **Background**

Section 305 of the Gramm-Leach-Bliley Act<sup>2</sup> added a new section (Section 47) to the Federal Deposit Insurance Act (FDIA).<sup>3</sup> This new section requires the Agencies to prescribe consumer protection regulations that apply to retail sales practices, solicitations, advertising or offers of insurance products by depository institutions. The regulations must also apply to persons engaged in these activities at either an office of the institution or on behalf of the institution.

In general, CSBS believes the proposal adequately embodies the tenets of the new law. The remainder of this letter focuses on areas where the proposal may benefit from further clarification.

## **Relation to State Law**

New Section 47 of the FDIA sets forth a general framework for determining the effect of the proposed federal regulations on state laws, regulations, orders or interpretations. The statutory framework calls for the FDIC, OCC and the Board to jointly determine whether the proposed federal rules preempt state law if state law provides lesser consumer protection than the federal rules in this area. Before making a preemption determination however, these agencies must first seek input, and consider any comments from relevant state regulatory agencies.

CSBS is pleased that the methodology described in the Supplementary Information of the proposal reflects the statutory requirements.<sup>4</sup> CSBS is encouraged that the Agencies will actively seek input from the states when evaluating the relationship between state and federal law and we look forward to working with the Agencies in this area.

Additionally, CSBS suggests clarification regarding a specific provision in the proposed rule. According to the proposal's Supplementary Information, when the FDIC, OCC and the Board jointly determine that a state law is preempted, the agencies will send a written notice to the appropriate state insurance authority. The notice is intended to inform the state that the federal rules will be applicable unless the state adopts legislation within three years to override the preemption by adopting legislation that meets or exceeds the consumer protection provisions contained in the proposed rule.<sup>5</sup> CSBS notes that state banking laws and regulations also provide many consumer protections with respect to depository

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<sup>2</sup> Pub. L. 106—102, sec. 305, 113 Stat. 1338, (Nov. 12, 1999).

<sup>3</sup> 12 U.S.C. 1831x.

<sup>4</sup> 65 Fed. Reg. 50887, (Aug. 21, 2000)

<sup>5</sup> Id.

institution sales of insurance. Therefore, we request that the agencies also send the notice to the relevant state banking authority. This will insure that the notice is received by the state agencies with the authority to interpret the applicable law, regulation, order or interpretation.

CSBS believes that most state statutes provide significant consumer protection relating to depository institution sales of insurance. However, we seek clarity regarding whether a state's law remains effective during the three-year interval after the federal agencies provide a preemption notice. CSBS also seeks clarity regarding what state actions would satisfy the requirements for overriding a preemption notice.

### **Covered Persons**

New Section 47 also gives the Agencies discretion to determine how the law will apply to depository institution subsidiaries. As proposed, only subsidiaries selling insurance products or annuities at a depository institution's office or acting "on behalf of" the depository institution must comply with the regulations.<sup>6</sup> The proposal includes a series of characteristics to describe when a subsidiary is acting on behalf of a depository institution.

CSBS is concerned that the practical affect of limiting coverage as currently proposed may result in customer confusion when consumers buy insurance products from an affiliate of a holding company or subsidiary of a depository institution. Therefore, we suggest revising the proposed rule so that it covers depository institutions and all of their subsidiaries engaged in insurance sales. We further recommend that affiliates of depository institution holding companies be covered if they engage in insurance sales activities on behalf of the institution. Such activities would include using the name or corporate logo of the holding company or affiliate in documents evidencing the sale, solicitation, advertising or offer of an insurance product or annuity. CSBS believes this approach provides more effective consumer protections and avoids the potential for regulatory inconsistency.

CSBS further recommends that the Agencies uniformly use the term "covered person" in lieu of "you" to describe those entities that must comply with the proposal. While CSBS appreciates the Agencies' attempt to simplify the language used in the proposed rule, we believe that the term "covered person" provides greater clarity in this instance.

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<sup>6</sup> Id. at 50883.

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**Conclusion**

CSBS reiterates its support for the Agencies' recognition that the States play a valuable role in evaluating the interplay between state and federal regulations. We look forward to working with you on this issue, and we invite you to call on us if we can provide additional information.

Best personal regards,



Neil Milner

President and CEO